





Class 2

Book _____

Copyright N^o _____

COPYRIGHT DEPOSIT.



A STUDY IN
ALEXANDER HAMILTON



A STUDY IN ALEXANDER HAMILTON

BY
FONTAINE T. FOX
OF THE LOUISVILLE BAR



NEW YORK AND WASHINGTON
THE NEALE PUBLISHING COMPANY
1911

Copy 2

E 30'2

6

H 2 F

11

Copyright, 1911, by
THE NEALE PUBLISHING COMPANY

© Cl. A 292823

p

TO

HON. BOYD WINCHESTER

*Former Congressman from Kentucky, Minister
to Switzerland, and my classmate and
lifelong friend, this book is
dedicated by*

THE AUTHOR



CHAPTER I

In the study of history and in the study of the lives of great men the moral nature of the facts of both studies seems to escape the thoughtful attention of many readers. All men, it is true, read with their eyes; but equally is it true that only a few read with their minds. That history is philosophy teaching by example has been long accepted as a truism. Indeed, if history be merely a chronicle of past events, it is as useless as worn out furniture, and should be stored in the attic of the mind.

The facts in the lives of great men are the true interpreters of their real characters. Through these facts we may penetrate to the motives of men. Through the moral nature of these facts, correctly analyzed, we may solve the problems of the lives of the great of the past with the unerring certainty of a mathematical demonstration. The injustice that is done to the character of some men is due more to the absence of thought in the mind of the reader than to hate, envy, or to prejudice, while the enthusiastic admiration so generally given to others, by

which they get the start of this majestic world, may be attributed to the same cause. Facts are the test, the true index to the character of men.

The smaller and, apparently, the more insignificant the facts in their nature, the surer and the more indisputable their evidence against men. It is only in trifles that we let go of ourselves, get off guard, act out of our inner nature, and are as God made us, guided by the promptings of the act alone, with no thought of its effect.

I began the study of the life and the character of Alexander Hamilton with a feeling similar to that of a surgeon who, scalpel in hand, approaches the table upon which lies the body that he intends to make the subject of a surgical analysis. Taught to respect and to admire Hamilton from my earliest years by my father, to whom Hamilton was almost an ideal man, I had accepted, with unquestioning faith, his estimate of the man as just. The shock was great when I found myself rejecting all the fabrication of writers who were dazzled by Hamilton's immodest assertion of his own abilities. From intense admiration, I came to hold the man in contempt for his life, for his conduct, and for his motives.

In intellect Alexander Hamilton was a giant; in character he was morally a weakling. Without a father, without a country, without a God, he could have been nothing less than what he was. The facts of his career prove the truth of this summary of the man.

And it is time that the truth should be told about this adventurer in American politics. More dazzling in manner than Benjamin Disraeli, except as a writer, more magnetic in character, more eloquent in debate, and more accomplished in letters, his career outshines that of the great Englishman, whom he somewhat resembles. He possessed to an eminent degree those qualities of mind that in public men have in all ages and in all countries been so attractive to their fellowmen, and for which they have always been forgiven every misdoing. Where the misdoings of such men could not always be concealed, always they have been defended long and vigorously, until they have never failed to dwindle to insignificant faults, or to mere acts of thoughtless imprudence.

Hamilton's character in private life will be found to correspond with his political principles, the former in reality being the correlative of the latter.

I shall consider his character solely upon the

statements made in the "vindication" of the charge of speculating in Treasury warrants that was published by himself, which vindication now lies before me.

Before making any extracts from Hamilton's vindication, or confession, I desire to state that I have in my library the vindication, Callender's two books, the statements in one of which caused Hamilton to publish his vindication, and also the original autograph letter of Beverley Randolph, about the trial of Callender for libel.

The title page of the vindication is as follows: *Observations on Certain Documents Contained in No. V and VI of "The History of the United States for the Year 1796," in Which the Charge of Speculation Against Alexander Hamilton, Late Secretary of the Treasury, is Fully Refuted. Written by Himself. Philadelphia: Printed for John Fenno, by John Bioren. 1797.*

My extracts will be taken from the original sources, not from other books and pamphlets.

Before giving the statements made in his vindication I shall quote from two authors, of whom one refers to Hamilton as a man, the other to the vindication. I quote first from Gouverneur Morris, who delivered Hamilton's funeral oration:

“The first point of his biography is that he was a stranger of illegitimate birth—some mode must be contrived to pass over this handsomely. He was indiscreet, vain and opinionated—these things must be told or the character will be incomplete, and yet they must be told in such manner as not to destroy the interest. He was in principle opposed to republican and attached to monarchical government, and then his opinions were generally known, and have been long and loudly proclaimed. His share in forming our Constitution must be mentioned, and his unfavourable opinion can not therefore be concealed. The most important part of his life was his administration of the finances. The system he proposed was in one respect radically wrong; moreover, it has been the subject of some just and much unjust criticism. Many are still hostile to it, though on improper ground. I must not either dwell on his domestic life; he has long since foolishly published the avowal of conjugal infidelity.”—*Memoirs of Gouverneur Morris*, 2 vols., pp. 456, 457.

I now quote from the *Federalist System*, by I. S. Bassett, one of the historical series in *The American Nation—A History*, pp. 215, 216:

“Soon after his arrival in America Monroe gave a savage blow to Hamilton, probably in retaliation for the latter’s influence on his recall. In 1792 one Reynolds had been suspected of frauds against the government and the affair had taken such a turn as to suggest that Hamilton was compromised with him. The evidence was embraced in certain letters whose real import was far different from what appeared on the surface. The matter was referred to three members of Congress—Monroe, Venable, and Muhlenberg. To them Hamilton owned in confidence that the letters were written in connection with an illicit relation with Mrs. Reynolds which had been carried on with her husband’s knowledge, and by reason of which Hamilton had paid Reynolds about twelve hundred dollars for blackmail. The three men were satisfied, and assured the public that Hamilton was innocent. The papers were placed in Monroe’s hands, all promising to keep them secret. To them Monroe added a statement by Reynolds which was not submitted to Hamilton, the purport of which was to confirm the original charge of complicity in fraud. It was a piece of bad dealing on Monroe’s part, and came near involving the two men in a duel at a later date.

When Monroe went to France he left the papers in the hands of a friend in Virginia whose name has never been revealed, but when Callender's annual register appeared in 1797 they were given to the public. Hamilton called on the three custodians for an explanation. Muhlenberg and Venable promptly and explicitly exonerated themselves, but Monroe halted and shifted his excuses in such a manner that it is evident that he was responsible for the revelation. It is assumed that he disclosed them in revenge for his own sufferings."

In considering the statements of this extract I have been at a loss to find what suffering Monroe could have felt by reason of Hamilton's dishonorable conduct towards his own wife, or from his complicity in the fraudulent transaction, with Reynolds as his agent, to speculate in Treasury warrants, or from his adulterous amour with Mrs. Reynolds. The letters mentioned in the foregoing extract can be found in *Callender's History of the United States for 1796*, beginning on page 209.

Page 9: "The charge against me is a connection with one James Reynolds for purposes of

improper pecuniary speculation. My real crime is an amorous connection with his wife, for a considerable time with his privity and connivance, if not originally brought on by a combination between the husband and wife with the design to extort money from me."

Aaron Burr was never accused by his bitterest enemy of kissing and then telling.

A critical examination of the vindication nowhere discloses such a juncture of events connected with the charge as would render this statement in any way logically necessary in refuting the charge of speculation.

Pages 9 and 10: "This confession is not made without a blush. I can not be the apologist of any vice because the ardour of passion may have made it mine. I can never cease to condemn myself for the pang, which it may inflict in a bosom eminently entitled to all my gratitude, fidelity and love. But that bosom will approve, that even at so great an expense, I should effectually wipe away a more serious stain from a name which it cherishes with no less elevation than tenderness. The public too will, I trust, excuse the confession. The necessity of it to

my defence against a more heinous charge could alone have extorted from me so painful an indecorum."

Why drag his wife, the mother of his children, into this nauseous and disgusting muddle? His character, not hers, had to be burnished anew. What was his conduct? At the worst, in his opinion, "an indecorum" only. What is the statement in this extract? It is simply the cant of a sanctimonious hypocrite striving to use a noble sentiment in his own service, in the hope that its invocation would regain for him the respect and the confidence of the public.

But is the charge of speculation in Treasury warrants "a more heinous charge" than treachery to his conjugal vow?

Suppose his wife had been so false to her conjugal vow, would he have considered her offense less heinous than that charged against him?

Taking his own estimate of his honor as a man, a husband, and as a father, you have the clew to this creature's despicable character.

He sat for his own portrait. And he has painted himself in fadeless colors to the very life.

Page 17: "Some time in the summer of the year 1791 a woman called at my house in the City of Philadelphia and asked to speak with me in private. I attended her into a room apart from the family. With a seeming air of affliction she informed me that she was the daughter of a Mr. Lewis, sister to a Mr. G. Livingston of the State of New York, and wife to a Mr. Reynolds whose father was in the commissary department during the war with Great Britain, that her husband, who for a long time had treated her very cruelly, had lately left her, to live with another woman, and in so destitute a condition, that though desirous of returning to her friends she had not the means—that knowing I was a citizen of New York, she had taken the liberty to apply to my humanity for assistance."

Humanity seems a strange word to use in this connection. Charity, I believe, is the word generally used by well regulated minds.

Page 18: "I replied that her situation was a very interesting one—that I was disposed to afford her assistance to convey her to her friends, but this at the moment not being convenient to me (which was the fact) I must request the place

of her residence, to which I should bring or send a small supply of money. She told me the street and number of the house where she lodged. In the evening I put a bank bill in my pocket and went to the house. I enquired for Mrs. Reynolds and was shewn upstairs, at the head of which she met me and conducted me into a bed room. I took the bill out of my pocket and gave it to her. Some conversation ensued from which it was quickly apparent that other than pecuniary consolation would be acceptable."

Note that this meeting is the first one between Hamilton and Mrs. Reynolds, and also note that this meeting occurred in the summer of the year 1791. Hamilton's statement is the pivotal point of the whole matter as to her husband and his charge against Hamilton.

Page 21: "On the 19th, I received the promised letter (No. IV-b) the essence of which is that he was willing to take a thousand dollars as the plaister for his wounded honour.

"I determined to give it to him, and did so in two payments, as per receipts (No. V and VI) dated the 22nd of December and 3rd of January [1791]."

Appendix, p. xv:

“No. V.

“Received December 22 of Alexander Hamilton six hundred dollars on account of a sum of one thousand dollars due to me.

“James Reynolds.

“No. VI.

“Received Philadelphia January 3 1791 of Alexander Hamilton four hundred dollars in full of all demands. James Reynolds.”

The amounts specified in these two receipts make the \$1,000 mentioned in the extract of page 21, while the receipts are those mentioned in the same extract. They are so fully described that no one can be mistaken as to their identity. This \$1,000 is “the plaister for his [Reynolds’s] wounded honour.”

The first receipt, No. V, is dated December 22, which must be December of the year 1790, because receipt No. VI, which was for the balance of the \$1,000, was dated January 3, 1791. Consequently Hamilton plastered Reynolds’s wounded honor at least six to eight months before he had ever seen Mrs. Reynolds, “some time in the summer of 1791,” unless the summer

of 1791 came ahead of time in Philadelphia, before December 22, 1790, and certainly before January 3, 1791. Comment is unnecessary.

Hamilton seemed to be absolutely unconscious of the baseness of character as disclosed by the facts that he himself brought forward in his defense.

Page 18: "After this I had frequent meetings with her, most of them at my own house; Mrs. Hamilton with her children being absent on a visit to her father."

Did any other man claiming to be a gentleman ever sink to such degradation, to such debauchery, then publicly confess it in print? Yet this unscrupulous creature has been held up to American youth by American writers of biography and of history and by American statesmen and by American ministers of the Gospel "as the glass of fashion and the mould of form"—the one ideal gentleman known to American history, to American society, and to American politics. Hamilton turned his home into a bawdy house.

Immediately following the extracts relative to the two receipts I find this sentence:

Page 22: "It is a little remarkable that an avaricious speculating secretary of the treasury should have been so straitened for money as to be obliged to satisfy an engagement of this sort by two different payments."

There is in the statement in this extract the artistic touch of delicate satire, as the last receipt, No. VI, being "in full of all demands" and the last installment of the "plaister" applied to Reynolds's wounded honor, would include the wages due Mrs. Reynolds for her physical services as well as the amount due her husband as shown by the balance sheet struck on the speculative venture of Messrs. Hamilton & Reynolds. But Reynolds could see what was in Future's womb. No one with an impartial mind, critically reading this vindication, can conceive that Hamilton, though a great lawyer, had the slightest conception of the probative value of a fact upon the issue as to what was offered in evidence, or that he was conscious of the effect that his own statements would have upon public opinion. To his friends this confession must have produced an intense feeling of pity, of sympathy, and of regret; to his enemies, a feeling of unutterable contempt and

scorn as well as of fiendish delight; to those who were neither friend nor foe, a feeling of wonderment that he had not submitted the manuscript before publication to a true friend, who would have had every statement relative to Mrs. Reynolds eliminated.

While all the loathsome incidents connected with Hamilton's connection with Mrs. Reynolds are given publicly, without the least reserve, at the same time the reader is told by Hamilton of his injury to his wife, to his own conscience, and to his honor. Not one statement about Mrs. Reynolds, nor his own wife, nor his honor, nor his conscience tends in the slightest degree to disprove the charge of his speculative venture with Reynolds. The charge of speculation was abroad, in the world of politics, in society, at that time.

One reading the vindication at this day does not wonder that Hamilton's descendants have been buying it up for over a hundred years, to suppress it. Only at very long intervals can a copy be found, in some old book store, by one whose curiosity is aroused by the narratives of writers that have never seen it.

The literary world has been shocked by the confessions of Rousseau. But what are they

when compared to the confessions of Alexander Hamilton! This Reynolds episode seems considered by him, as it was certainly treated, as only an "indecorum" in his private and social life.

CHAPTER II

Bearing in mind these two pivotal facts, that Alexander Hamilton first met Mrs. Reynolds "some time in the summer of the year 1791," and that for her services in that behalf (excuse the language of the bar, but it is so expressive, so descriptive), he paid to her husband \$1,000, the first payment being made December 22, 1790, "on account of a sum of one thousand dollars due to me," and the second, and last, being made January 3, 1791, "in full of all demands." It will be observed that these receipts bear evidence of the touch of a legal hand. If Hamilton owed Reynolds \$1,000 on December 22, 1790, the debt could not have been created by any services rendered to Hamilton by Mrs. Reynolds, because at that time Hamilton had not seen her; nor did he see her for at least six months after December 22, 1790. The pertinent question springs at once to a thoughtful reader, Upon what account did Hamilton owe Reynolds that sum of money? The entire transaction, no matter to what it related, was closed by the payment of January 3, 1791, because that receipt was "in

full of all demands.” This money was not paid to Reynolds on account of any connection between Hamilton and Mrs. Reynolds, because if it had been so paid, Hamilton was a deliberate liar in giving incorrect dates as to the payments. He had no motive to give wrong dates if he intended this money as a “plaister” to Reynolds’s wounded honor. Dates subsequent to the summer of the year 1791 alone would prove any relation of these payments to a connection between Hamilton and Mrs. Reynolds.

Pages 10 and 11: “But the present accusation imputes to me as much folly as wickedness—All the documents show, it is otherwise matter of notoriety, that Reynolds was an obscure, unimportant and profligate man. Nothing could be more weak, because nothing could be more unsafe, than to make use of such an instrument; to use him too without any intermediate agent more worthy of confidence who might keep me out of sight, to write him numerous letters recording the objects of the improper connection (for this is pretended and that the letters were burnt at my request), to unbosom myself to him, with a prodigality of confidence, by very unnecessarily telling him, as he alleges, of a con-

nection in speculation between myself and Mr. Duer. It is very extraordinary, if the head of the money department of a country, being unprincipled enough to sacrifice his trust and his integrity, could not have contrived objects of profits sufficiently large to have engaged the cooperation of men of far greater importance than Reynolds, and with whom there could have been due safety, and should have been driven to the necessity of unkennelling such a reptile to be the instrument of his cupidity."

Are men of "far greater importance than Reynolds" accustomed to be willing tools or intermediate agents in such speculative transactions? Would Alexander Hamilton have dared to approach any man of known honesty, any gentleman, to engage in this speculation? As to his connection with Duer, I believe it to be true that Hamilton escaped exposure in the dishonest speculation with Duer by Duer's very fortunate death, before the congressional committee in its investigation had reached Hamilton's connection with the Hamilton-Duer speculation.

But would it have been possible for a man of despicable character and of low social position to have injured in any way, or for any purpose,

a man of Hamilton's social standing, professional character, and political influence? If the charges against Hamilton were all false, and known by him to be false, would he not have treated them with the silent contempt of an honorable, self-respecting, and courageous man, trusting to the impenetrable shield of his own honesty?

I quote from "Observations," etc.—really a preface to the vindication.

"The spirit of Jacobinism, if not entirely a new spirit, has at least been clothed with a more gigantic body and armed with more powerful weapons than it ever before possessed. It is perhaps not too much to say, that it threatens more extensive and complicated mischiefs to the world than have hitherto flowed from the three great scourges of mankind, WAR, PESTILENCE and FAMINE. To what point it will ultimately lead society, it is impossible for human foresight to pronounce; but there is just ground to apprehend that its progress will be marked with calamities of which the dreadful incidents of the French revolution afford a very faint image. Incessantly busied in undermining all the props of public security and private happi-

ness, it seems to threaten the political and moral world with a complete overthrow.

“A principal engine, by which this spirit endeavours to accomplish its purposes is that of calumny. It is essential to its success that the influence of men of upright principles, disposed and able to resist its enterprises, shall be at all events destroyed. Not content with traducing their best efforts for the public good, with misrepresenting their purest motives, with inferring criminality from actions innocent or laudable, the most direct falsehoods are invented and propagated, with undaunted effrontery and unrelenting perseverance. Lies often detected and refuted are still revived and repeated, in the hope that the refutation may have been forgotten or that the frequency and boldness of accusation may supply the place of truth and proof. The most profligate men are encouraged, probably bribed, certainly with patronage if not with money, to become informers and accusers. And when tales, which their characters alone ought to discredit, are refuted by evidence and facts which oblige the patrons of them to abandon their support, they still continue in corroding whispers to wear away the reputation which they could not directly subvert. If, luckily for

the conspirators against honest fame, any little foible or folly can be traced out in one whom they desire to persecute, it becomes at once in their hands a two-edged sword, by which to wound the public character and stab the private felicity of the person. With such men, nothing is sacred. Even the peace of an unoffending and amiable wife is a welcome repast to their insatiate fury against the husband.

“In the gratification of this baleful spirit, we not only hear the Jacobian newspapers continually ring with odious insinuations and charges against many of our most virtuous citizens; but, not satisfied with this, a measure new in this country has been lately adopted to give greater efficacy to the system of defamation—periodical pamphlets issued from the same presses, full freighted with misrepresentation and falsehood, artfully calculated to hold up the opponents of the Faction to the jealousy and distrust of the present generation and if possible, to transmit their names with dishonour to posterity. Even the great and multiplied services, the tried and rarely equalled virtues of a Washington, can secure no exemption.

“How then can I, with pretensions every way inferior expect to escape? And if truly this be,

as every appearance indicates, a conspiracy of vice against virtue, ought I not rather to be flattered, that I have been so long and so peculiarly an object of persecution? Ought I to regret, if there be anything about me, so formidable to the Faction as to have made me worthy to be distinguished by the plentitude of its rancour and venom?

“It is certain that I have had a pretty copious experience of its malignity. For the honour of human nature, it is to be hoped that the examples are not numerous of men so greatly calumniated and persecuted, as I have been, with so little cause. * * *

“Relying upon this weakness of human nature, the Jacobin Scandal-Club, though often defeated, constantly return to the charge.”

As a very striking contrast to the noble and elevated sentiments expressed in the preceding extracts, so creditable to Alexander Hamilton, who could so easily and naturally act a virtue that he had not, I copy a confidential letter that he wrote to Justice John Rutledge, one of Aaron Burr's relatives. Alexander Hamilton evidently had a Jacobin scandal club of his own, of which he was the sole member. This letter,

with editorial introduction, is taken from *The Century Magazine* of June, 1900.

[The following letter of Alexander Hamilton, though addressed to John Rutledge, Associate Justice of the Supreme Court, was found among the papers of Francis Hopkinson, one of the signers of the Declaration of Independence. It is here printed from the manuscript. Although a small portion of it has been published before, as a whole it has not appeared before.

The enclosed characterization of Burr, it is believed, has not before been published, though in large part it is similar in expression to letters addressed by Hamilton to his contemporaries in opposition to Burr's political aspirations.—*Editor.*]

“New York Jany. 4, 1801.

“MY DEAR SIR

“My extreme anxiety about the ensuing election of President by the House of Representatives will excuse to you the liberty I take in addressing you concerning it without being consulted by you. Did you know Mr. Burr as well as I do, I should think it unnecessary. With your honest attachment to the country and correctness of views, it should not then be possible for you to hesitate, if you now do, about the course to be taken. You would be clearly of opinion with me that Mr. Jefferson is to be preferred. As long as the Federal party preserve their high ground of integrity and principle, I

shall not despair of the public weal. But if they quit it and descend to be the willing instruments of the Elevation of the most unfit and most dangerous man of the community to the highest station in the Government I shall no longer see any anchor for the hopes of good men. I shall at once anticipate all the evils that a daring and unprincipled ambition wielding the lever of Jacobinism can bring upon an infatuated country.

“The enclosed paper exhibits a faithful sketch of Mr. Burr’s character as I believe it to exist, with better opportunities than almost any other man of forming a true estimate.

“The expectation, I know, is that if Mr. Burr shall owe his elevation to the Federal party, he will judge it his interest to adhere to that party. But it ought to be recollected that he will owe it in the first instance to the antifederal party; that among these, perhaps not in the House of Representatives, a numerous class prefers him to Mr. Jefferson as best adapted by the boldness and cunning of his temper to fulfill their mischievous views; and that it will be the interest of his ambition to preserve and cultivate these friends. Mr. Burr will doubtless be governed by his interests as he views it. But stable power

and wealth being his objects—and there being no prospect that the respectable and sober Federalists will countenance the projects of an irregular ambition or prodigal cupidity, he will not long lean upon them—but selecting from among them men suited to his purpose, he will seek with the aid of these, and of the most unprincipled of the opposite party to accomplish his ends. At least such ought to be our calculation. From such a man as him, who practices all the maxims of a Catiline, who, while despising, has played the whole game of democracy, what better is to be looked for? 'Tis not to a chapter of accidents that we ought to trust the Government peace and happiness of our country. 'Tis enough for us to know that Mr. Burr is one of the most unprincipled men in the U. States in order to determine us to decline being responsible for the precarious issues of his calculations of interest.

“Very different ought to be our plans. Under the uncertainty of the event we ought to seek to obtain from Mr. Jefferson these assurances: 1. That the present Fiscal system will be maintained. 2. That the present neutral plan will be adhered to. 3. That the Navy will be preserved and gradually increased. 4. That Fed-

eralists now in office not being Heads of the great departments will be retained. As to the heads of Departments and other matters he ought to be free.

“You can not in my opinion render a greater service to your country than by exerting your influence to counter-act the impolitic and impure idea of raising Mr. Burr to the Chief Magistracy.

“Adieu my dear sir, Yrs. with

“sincere affecn & regard

“A Hamilton

“J. Rutlege, Esqr.”

[The enclosure also in Hamilton's handwriting.]

“Confidential.

“A Burr

“1. He is in every sense a profligate, a voluptuary in the extreme, with uncommon habits of expense, in his profession extortionate to a proverb, suspected on strong grounds of having corruptly served the views of the Holland Company in the capacity of a member of our legislature;* and understood to have been guilty of several breaches of probity in his pe-

*He co-operated in obtaining a law to permit aliens to hold and occupy lands.

cuniary transactions. His very friends do not insist upon his integrity.

“2. He is without doubt insolvent for a large deficit. All his visible property is deeply mortgaged and he is known to owe other large debts for which there is no specific security. Of the number of these is a judgment in favour of Mr. Angerstien for a sum which with interest amounts to about 80,000 dollars.

“3. The fair emoluments of any station under our government will not equal his expenses in that station; still less will they suffice to extricate him from his embarrassments. He must therefore from the necessity of his situation have recourse to unworthy expedients. These may be a bargain and sale with some foreign power or combination with public agents in projects of gain by means of the public monies; perhaps and probably to enlarge the sphere—a war.

“4. He has no pretensions to the station from services. He acted in different capacities in the last war finally with the rank of Lt. Col. in a regiment and gave indications of being a good officer; but without having had the opportunity of performing any distinguished action. At a critical period of the war, he resigned his

commission, assigning for cause ill health and went to repose at Paramus in the State of New Jersey. If his health was bad, he might without difficulty have obtained a furlough and was not obliged to resign. He was afterwards seen in his usual health. The circumstances excited much jealousy of his motives. In civil life he has never projected nor aided in producing a single measure of important public utility.

“5. He has constantly sided with the party hostile to Federal measures before and since the present constitution of the U. States. In opposing the adoption of this Constitution he was engaged covertly and insidiously; because as he said at the time ‘it was too strong and too weak’ and he has been uniformly the opposer of the Federal Administration.

“6. No mortal man can tell what his political principles are. He has talked all around the compass. At times he has dealt in all the jargon of Jacobinism; at other times he has proclaimed decidedly the total insufficiency of the Federal Government and the necessity of changes to one far more energetic. The truth seems to be that he has no plan but that of getting power by any means and keeping it by all means. It is probable that if he has any theory tis that of a simple

despotism. He has intimated that he thinks the present French Constitution not a bad one.

“7. He is of a temper bold enough to think no enterprise too hazardous and sanguine enough to think none too difficult. He has censured the leaders of the Federal party as wanting in vigour and enterprise, for not having established a strong government when they were in possession of the power and influence.

“8. Discerning men of all parties agree in ascribing to him an irregular and inordinate ambition. Like Catiline he is indefatigable in courting the young and the profligate. He knows well the weak sides of human nature and takes care to play in with the passions of all with whom he has intercourse. By natural disposition, the haughtiest of men, he is at the same time the most creeping to answer his purposes. Cold and collected by nature and habit he never loses sight of his object and scruples no means of accomplishing it. He is artful and intriguing to an inconceivable degree. In short all his conduct indicates that he has in view nothing less than the establishment of supreme power in his own person. Of this nothing can be a surer index than having in fact high-toned notions of government, he has nevertheless constantly op-

posed the Federal and courted the popular party. As he never can effect his wish by the aid of good men, he will court and employ able and daring scoundrels of every party and by availing himself of their assistance and of all the bad passions of the society, he will in all likelihood attempt an usurpation.

“8 [*sic*]. Within the last three weeks at his own table he drank these toasts successively: 1. The French Republic. 2. The commissioners who negotiated the convention. 3. Buonaparte. 4. LaFayette: and he countenanced and seconded the positions openly advanced by one of his guests that it was the interest of this country to leave it free to the Belligerent powers to sell their prizes in our ports and to build and equip ships for their respective uses; a doctrine which evidently aims at turning all the naval resources of the U. States into the channel of France; and which by making these states the most pernicious enemy of G. Britain would compel her to go to war with us.

“9. Though possessing infinite art, cunning and address, he is yet to give proofs of great or solid abilities. It is certain that at the bar he is more remarkable for ingenuity and dexterity than for sound judgment or good logic.

From the character of his understanding and heart it is likely that any innovations which he may effect will be such as to serve the turn of his own power, not such as will issue in establishments favourable to the permanent security and prosperity of the Nation—founded upon the principles of a strong, free and regular Government.”

This letter is a brief chronicle and abstract of Alexander Hamilton’s character and nature, of his acts and their motives, of his life and the means by which he undertook to gain his ends. Of the adroitness with which he could turn his own intentional misconstruction into an apparent fact, we take one instance which is all sufficient, because facts are stronger, though not so polished, than the figures of rhetoric. In subsection No. 1, Hamilton says: “* * * suspected on strong grounds of having corruptly served the views of the Holland Company in the capacity of a member of our legislature.” In explanation of this act of Burr I quote again the foot-note appended by the editor of *The Century Magazine*: “He co-operated in obtaining a law to permit aliens to hold and convey lands.” In other words, Burr tried by legislation to offer

inducements to the very best men to come and settle in this country. The law was wise, patriotic in its purpose, and very judicious in its means.

A man so cowardly as to write such a confidential letter could conceive and undertake any enterprise save one that would compel him to lead an honest life or oblige him to tell the truth. The letter itself furnishes indisputable evidence—it is *self-evident*—that its source, its cause, is envy. And all men know how soon, how quickly, how permanently, envy curdles into hate. Envy is the father of that form of cowardice which often shows itself with courageous freedom in words confidentially spoken.

To attempt a critical analysis of all the various statements in this remarkable letter,—all the more remarkable because written to a justice of the United States Supreme Court,—or to discuss in its fullness the principle of morals involved in it, would be simply to lay bare the poverty of the English language to express one's thoughts when one's moral nature is assailed and shocked by statements made in a way so infamous, so cowardly. What purpose could Hamilton effect, what advantage could he secure, what injury could he do to Burr, by a con-

fidential letter to a federal judge? Did he expect Judge Rutledge to yield to the temptation to give it publicity, that Hamilton himself might escape its responsibility by asserting that the judge had betrayed a confidence? He ought to have remembered that there was not one drop of blood such as his in Judge Rutledge's veins.

Take each statement as it is written. Each is stated, and is intended to be received, as a fact. Nothing may be added to a fact. The ornamental language. To the eighth page of the beauty, but seldom increases the power, of a statement.

In his vindication Hamilton poured out upon Reynolds and two other men, Clingman and Fraunces, the vials of his wrath, expressed in violent language. To the eighth page of the vindication he appended this footnote:

“Would it be believed after all this, that Mr. Jefferson, Vice-President of the United States, would write to this Fraunces friendly letters? Yet such is the fact as will be seen in the Appendix, Nos. XLIV and XLV.”

Would it have been believed that Alexander Hamilton, Secretary of the Treasury, would have vindicated his betrayal of his honor and

his treachery to his wife by his adulterous amour with Mrs. Reynolds? "Yet such is the fact as will be seen," in this vindication.

Why go out of the line of his argument, evasive and inconclusive as it is, to speak in this way of Mr. Jefferson? What had he to do with Hamilton's connection with Mrs. Reynolds, or with her husband, or with Clingman, or with Hamilton's troubles with Fraunces? With the scent and the nature of a bloodhound Hamilton pursued the man who did his own thinking and had the courage to reach a conclusion different from his. When his thoughts became crystalized into acts he discharged his calumnies and slanders in confidential words, spoken or written, with the accuracy and directness of riflemen shooting at a target.

The act of writing letters to Fraunces by Jefferson was dishonorable because Jefferson was Vice-President of the United States! Hamilton's treachery to his amiable and loving wife was a less "heinous offence" in his eyes than a speculative venture in Treasury warrants, and his adulterous amour with Mrs. Reynolds was "only an indecorum" because Alexander Hamilton was Secretary of the Treasury of the United States.

Consider the noble sentiments expressed in

the preface to his vindication and his terrible and well-deserved strictures upon the Jacobin Scandal-Club, then consider the statements in his confidential letter to Judge Rutledge, his motives, his object! What can be, what will be, the judgment of every honest and impartial man in his estimate of Hamilton's moral nature, as a man, as a gentleman, and as a statesman? In what literature of any civilized country can another production be found to equal this vindication—reflecting as it does the baseness of its author? How could any man have written such a letter, then assert a right to be admitted to the society of gentlemen? Only a coward could have written it. In using the word “coward” in this connection I leave out of all consideration the courage that is in nearly all men, which is produced by the influence of public opinion upon their minds, their lives, their conduct, and their characters. In this letter to Judge Rutledge Hamilton describes his true character. No one may misread it. As shown by it, his baseness, his depravity, his cowardice, is without a parallel in the annals of any country, ancient or modern.

CHAPTER III

I do not purpose to make any defense of Aaron Burr nor attempt a refutation of the charges that were brought against him, malicious, malignant, and malevolent as they were. Alexander Hamilton himself must have known them to be untrue. None of Burr's enemies has yet asserted, nor even hinted, that he was ever in any way disloyal to his wife during her lifetime. Nor in all my reading, extensive and impartial as it has been, have I discovered any confidential letters written by him solely to indulge and gratify that malignant hate that is bred in the womb of Envy, and that may be bred nowhere else.

Home life is a true test of character, home manners the test of a gentleman.

To the impartial mind the feeling involuntarily comes up that, succumbing to Alexander Hamilton's magnetism of character and to his fascinating manners, Mrs. Reynolds seduced herself while Hamilton yielded the needed consolations due to her in her unfortunate condition. His conduct consequently was only "an indecorum." That it may be shown that this

opinion is not unjust to him, that it is not based on a desire to deal unfairly, nor to put a forced construction upon his statements, I quote from his vindication that I may prove the truth of this judgment upon his conduct:

Page 20: "All the appearances of violent attachment, and of agonizing distress at the idea of a relinquishment, were played off with a most imposing art. This, though it did not make me entirely the dupe of the plot, yet kept me in a state of irresolution. My sensibility, perhaps my vanity, admitted the possibility of a real fondness; and led me to adopt the plan of a gradual discontinuance rather than of a sudden interruption, as least calculated to give pain, if a real partiality existed. * * *

"Mrs. Reynolds, on the other hand, employed every effort to keep up my attention and visits."

Page 31: "The variety of shapes which this woman could assume was endless."

Then, immediately following, he gives the points and statements between her and a gentleman whose name he is not at liberty to give to the public. "His name would evince that he is an impartial witness," he says. "And though

I am not permitted to make a public use of it, I am permitted to refer any gentleman to the perusal of his letter in the hands of William Bingham, Esquire.’’

This statement is an illustration of a distinction without a difference. Hamilton could not make a name known to the public, but his friend, William Bingham, Esquire, is permitted to do it for him, in his name. These extracts refer to the condition of his connection with this woman long after he had, according to his vindication, discovered that his intrigue with her was well known to her husband, and after Clingman was a *particeps criminis* in the whole affair.

Did any other man of such acknowledged influence in public life, and of such high recognized position in genteel society, with wife and children, ever before or since confess to the public in print such weakness of character, such vacillation of judgment, and such puerile inability to show any manhood, any self-respect, or any courage, physical, moral, or mental? Indeed has he drawn his own picture, painted in fadeless colors.

A careful study of his vindication fails to disclose a single statement in it, in positive

terms, that he did not speculate in government warrants. He makes an elaborate argument to disprove his guilt, but nowhere asserts in positive words that he engaged in no speculative venture. In his argument he makes these points: First, that Reynolds was a base rascal, an obscure, an unimportant, and a profligate man; Second, that he would have selected as his intermediate agent one more worthy of his confidence; Third, page 11, "It is very extraordinary, if the head of the money department of a country, being unprincipled enough to sacrifice his trust and his integrity, could not have contrived objects of profit sufficiently large to have engaged the co-operation of men of far greater importance than Reynolds, and with whom there could have been due safety, and should have been drawn to the necessity of unkennelling such a reptile to be the instrument of his cupidity."

It was not possible, unless the men of "far greater importance than Reynolds" had been just as dishonest and serviceable as the reptile he unkenneled, to be the instrument of his cupidity. Even in this day of universal corruption, state and federal, one may not find such men of "far greater importance than Reynolds" to do such work—such disreputable jobbery.

As an example of Hamilton's denial of the grave charge of speculation, I quote an extract referring to the interview had with him on this subject by Venable, Muhlenberg, and Monroe.

Page 28: "I deny absolutely, as alleged by the editor of the publication in question, that I intreated a suspension of the communication to the President, or that from the beginning to the end of the inquiry, I asked any favour or indulgence whatever, and that I discovered any symptoms different from that of a proud consciousness of innocence."

This statement is simply an argument—not a statement of a fact. Such statements can be, and are, made by criminals when discussing the charges against them when they desire to conceal their guilt from the attorney employed to defend them. Every lawyer that defends criminals is acquainted with such subterfuges, and such conduct is invariably considered as evidence of guilt, unless coupled with indisputable proof of innocence or positive disproof of the charge based on the assertion that the accused did not commit the act charged, and is treated as such.

I turn to Hamilton's interview with Venable, Monroe, and Muhlenberg. This interview relates to the charges against Alexander Hamilton, the talk of all circles, social and political, of that time.

Page 27: "Mr. Muhlenberg and Mr. Venable, in particular, manifested a degree of sensibility on the occasion. Mr. Monroe was more cold but entirely explicit."

But subsequently it seems that Mr. Monroe received other information that possibly justified him in thinking that Hamilton was not entirely innocent. It does not appear from the vindication that in this interview Hamilton made to these gentlemen a positive assertion that he had not engaged in speculations in government warrants. He simply argues the question of his innocence, as he does all through the devious course of his argument.

Page 27: "I insisted upon going through the whole, and did so. The result was a full and unequivocal acknowledgment on the part of the three gentlemen of perfect satisfaction with the explanation and expressions of regret at the

trouble and embarrassment which had been occasioned to me.”

Pages 28, 29: “Thus the affair remained till the pamphlets No. V and VI of the *History of the United States for 1796* appeared, with the exception of some dark whispers which were communicated to me by a friend in Virginia, and to which I replied by a statement of what had passed.

“When I saw No. V though it was evidence of a base infidelity somewhere, yet firmly believing that nothing more than a want of due care was chargeable upon either of the three gentlemen who had made the inquiry, I immediately wrote to each of them a letter of which No. XXV is a copy, in full confidence that their answer would put the whole business at rest. I ventured to believe, from the appearances on their part at closing our former interview on the subject, that their answers would have been both cordial and explicit.

“I acknowledge that I was astonished when I came to read in the pamphlet No. VI the conclusion of document No. V, containing the equivocal phrase, ‘*We left him under an impression our suspicions were removed,*’ which seemed to imply that this had been a mere piece of manage-

ment, and that the impression given me had not been reciprocal. The appearance of duplicity incensed me; but resolving to proceed with caution and moderation, I thought the first proper step was to inquire of the gentlemen whether the paper was genuine. A letter was written for this purpose a copy of which I have mislaid."

With his character involved, he mislaid this letter, or its copy. Marvelous negligence in a gentleman who was so sensitive about his honor that he considered a speculation in Treasury warrants a more heinous offense than an adulterous connection with a woman that he took into his home for illegal enjoyment, involving treachery to his wife and a betrayal of his marriage vow! One was only an indecorum, while the other a crime.

Before making any extracts from the documents referred to and from the letters which passed between these gentlemen, I shall make some quotations from the vindication immediately following his references:

Page 33: "But it is observed that the dread of the disclosure of an enormous connection was

not a sufficient cause for my humility, and that I had nothing to lose as to my reputation for chastity concerning which the world had fixed a previous opinion.

“I shall not enter into the question what was the previous opinion entertained of me in this particular—nor how well founded, if it was indeed such as it is represented to have been. It is sufficient to say that there is a wide difference between vague rumours and suspicions and the evidence of a positive fact—no man not indelicately unprincipled, with the state of manners in this country, would be willing to have a conjugal infidelity fixed upon him with positive certainty—he would know that it would justly injure him with a considerable and respectable portion of the society—and especially no man, tender of the happiness of an excellent wife could without extreme pain look forward to the affliction which she might endure from the disclosure, especially a *public disclosure*, of the fact. Those best acquainted with the interior of my domestic life will best appreciate the force of such a consideration upon me.”

This last sentence contains a very tactful and delicate reference to those rapturous moments

of ecstatic happiness when he and Mrs. Reynolds, in the absence of his wife, made Mrs. Hamilton's home the temporary dwelling of a woman of whose charms and fascinations the gentleman desired a monopoly.

Why is it that his most far-fetched and unnecessary allusion to Mrs. Reynolds always brings a reference of his excellent wife? Did each woman have her several and distinct excellencies of character and conduct, that to mention one always should bring to his mind the other?

If so "tender of the happiness of an excellent wife" and conscious of the extreme pain a public disclosure of his debauchery would bring to her "throbbing and palpitating bosom," why make it? What light did it throw on his innocence in these speculations? Did his publicly acknowledged guilt in the one case prove his innocence in the other? His connection with Mrs. Reynolds, disreputable and debauched as he was, did not disprove his speculative venture with Mr. Reynolds, dishonorable as it was. He admitted the former—put in into print and published it to the world. He published an argument to prove his innocence; but it is an argument, and nothing more.

Page 33: "The truth was, that in both relations and especially the last, I dreaded extremely a disclosure—and was willing to make large sacrifices to avoid it."

Page 34: "Candid men will derive strong evidence of my innocence and delicacy from the reflection, that under circumstances so peculiar, the culprits were compelled to give a real and substantial equivalent for the relief which they obtained from a department *over which I presided.*"

What was the real and substantial equivalent which they gave for the relief obtained from Hamilton's department? If true it be that his connection with Mrs. Reynolds was in a great measure due to the connivance of her husband, this amour sinks into an ordinary commercial transaction, stale, flat, and unprofitable in all its uses. He simply strikes a balance between his speculative losses with the husband and the rapturous moments of enjoyments of the wife.

Pages 35, 36: "Relative character and the written documents must still determine. These could decide without it, and they were relied upon. But could it be expected, that I should

so debase myself as to think it necessary to my vindication to be confronted with a person such as Reynolds? Could I have borne to suffer my veracity to be exposed to the humiliating competition?"

Hamilton was utterly unconscious that his very statements about his intimate relations with Mrs. Reynolds at his own home and elsewhere, to be found in his vindication, destroy all the value and influence of "relative character." He had already debased himself by his business transactions with her husband. It was no longer a question of his veracity. His interview with the gentlemen that are brought into this vindication disclosed that there was no question of his veracity. The issue was his personal and official integrity. Hamilton has not in this vindication vindicated either—much less both.

In his vindication he alludes to his letter No. XXV, dated July 5, 1797, from which I quote:

"They [certain attacks on Mr. Monroe] are ungrateful, because he displayed on an occasion, that will be mentioned immediately, the greatest lenity to Mr. Alexander Hamilton, the prime

mover of the Federal party. * * * The peculiar nature of this transaction renders it impossible that you should not recollect it in all parts and that your own declaration to me at the time contradicts absolutely the construction which the editor of the pamphlet puts upon the affair.”

Was Mr. Monroe the editor of the pamphlet? If he was not, how could he be held responsible for his construction of it? He was seeking an explanation. The letter continues:

“And I shall rely upon your delicacy that the manner of doing it will be such that one gentleman has a right to expect from another—especially as you must be sensible that the present appearance of the papers is contrary to the course which was understood between us to be proper and includes a dishonourable infidelity somewhere—I am far from attributing it to either of the three gentlemen; yet the suspicion naturally falls on some agent made use of by them.”

Hamilton is far from attributing it to any of the three. Yet he suspects each, and all three

made use of an agent. Another of his distinctions without a difference. Upon the ground of a mere suspicion of conduct, which he disclaims attributing to any of them, Hamilton demands an explanatory statement from Mr. Monroe of conduct which he, Hamilton, does not attribute to Monroe. The question inevitably follows, Upon what ground could Hamilton, claiming to be a gentleman, make this demand of Mr. Monroe? The real object of this letter will be shown in a short time. I quote from Mr. Muhlenberg's reply:

Page xxxvii: "At the same time permit me to remind you of your declaration also made in the presence of Mr. Wolcott that the information and letters in our possession justified the suspicions we entertained before your explanation took place, and that our conduct towards you in this business was satisfactory. Having no share or agency whatever in the publication or comments you are pleased to cite I must beg to be excused from making any remarks thereon."

I quote from Mr. Venable's letter:

Page xxxviii: "I have endeavoured to recollect what passed at the close of the interview which took place with respect to this transaction; it was said I believe by us in general terms that we were satisfied with the explanation that had been given, that we regretted the necessity that we had been subjected to in being obliged to make the inquiry, as well as the trouble and anxiety it had occasioned you, and on your part you admitted in general terms that the business as presented to us bore such a doubtful aspect as to justify the inquiry, and that the manner had been satisfactory to you.

"I have now to express my surprise at the contents of a letter published yesterday in Fenn's paper, in which you endeavour to impute to party motives the part which I have had in this business and endeavour to connect me with the releasement of persons, *committed as you say for heinous crimes.*"

Then, giving the real facts as to Reynolds and Clingman, which are in substance the same as those stated by Hamilton himself, Mr. Venable continues:

"If you will take the trouble to examine the

transaction you will find this statement correct, and you cannot be insensible of the injury you do me when you say, this was an attempt to release themselves from imprisonment by favour of party spirit, and that I was one of the persons resorted to on that ground. I appeal to your candour, and ask you if any part of my conduct in this whole business has justified such an imputation."

Pages xl and xli (from a joint letter by Muhlenberg and Monroe): "We think proper to observe that as we had no agency in or knowledge of the publication of these papers till they appeared, so of course we could have none in the comments that were made on them.

[Then, referring to the object and demand of information, they answer:]

" * * * and to which we readily reply, that the impression which we left on your mind as stated in that number, was that which rested on our own, and which was that the explanation of the nature of your connection with Reynolds which you then gave removed the suspicions we had before entertained of your being connected with him in speculation. Had not this been the case we should certainly not have left the impression on your mind, nor should we have de-

sisted from the plan we had contemplated in the commencement of the inquiry, of laying the papers before the President of the U. States.”

There the shoe was pinching. Washington was then President, to whom the matters of that interview were not communicated. Hamilton resigned his secretaryship the last of January, 1795,—his conduct was a prudent forecast, verging on the certainty of a prophetic vision. The vindication was not published until 1797. There follows an important statement in this letter:

“We cannot conclude this letter without expressing our surprise at the contents of a paper in the Gazette of the United States of the 8th instant, which states that the proceedings in the inquiry in question were the contrivance of two very profligate men who sought to obtain their liberation from prison by the favour of party spirit. You will readily recollect that one of these men, Mr. Clingman, was never imprisoned for any crime alleged against him by the department of the Treasury, and that the other, Mr. Reynolds, was upon the point of being released and was actually released and without our solicitation or even with, by virtue of an

agreement made with him by that department before the inquiry began."

In a letter from Monroe (page xliv) he says it was impossible to trace back all the impressions on his mind at the different periods, occupied as he was with other concerns; "but I well remember that on entering the one which bears my single signature, altho' I was surprised at the communication given, yet I neither meant to give or imply any opinion of my own as to its contents. I simply entered the communication as I received it, reserving to myself the liberty to form an opinion upon it at such future time as I found convenient, paying due regard to all the circumstances connected with it."

In letter No. XXXVII Hamilton says that Monroe's letter was unsatisfactory, then writes:

"It appears to me liable to this inference that the information of Clingman had revived the suspicions which my explanation had removed. This would include the very derogatory suspicion, that I had concerted with Reynolds not only the fabrication of all the letters and documents under his hand but also the forgery of the let-

ters produced as those of Mrs. Reynolds—since these last unequivocally contradict the pretence communicated by Clingman. I therefore request you to say whether the inference be intended.”

Mr. Monroe replied in substance just what he stated in his letter last quoted.

I quote from Hamilton's letter in answer:

Page xlv: “In my last letter to you I proposed a simple and direct question, to which I had hoped an answer equally simple and direct.” [After discussing Clingman, he concludes in these words:] “To have given or intended to give the least sanction or credit after all that was known to you, to the mere assertion of either of the three persons *Clingman*, *Reynolds* or his wife would have betrayed a *disposition towards me* which if it appeared to exist would merit epithets the severest that I could apply.”

To which Mr. Monroe replied, in part as follows:

Page xlvii: “It is proper to observe that in the explanation you gave, you admitted all the

facts upon which our opinion was founded, but yet accounted for them, and for your connection with Reynolds upon another principle. 'Tis proper also to observe that we admitted your explanation upon the faith of your own statement, and upon the documents you presented, though I do not recollect they were proved or that proof was required of them.

"You will remember that in this interview in which we acknowledged ourselves satisfied with the explanation you gave, we did not bind ourselves not to hear further information on the subject, or even not to proceed further in case we found it our duty to do so."

After the two had exchanged other letters of similar import, Mr. Monroe wrote:

Pages lvi and lvii: "I have stated to you that I had no wish to do you a personal injury. The several explanations which I have made accorded with truth and my ideas of propriety. Therefore I need not repeat them. If these do not yield you satisfaction, I can give no other, unless called on in a way which for the illustration of truth, I wish to avoid, but which I am ever ready to meet. This is what I meant by

that part of my letter which you say you do not understand.”

To which Hamilton replied, undertaking, in a circuitous way, to blame Monroe with the present situation of the affair. Concluding, he says:

Page lvii: “On the supposition that it so intended, I have authorized Major Jackson to communicate with you and to settle time and place.”

In reply Monroe said, page lvii: “I do not clearly understand the import of yours of the 4th instant and therefore desire an explanation. With this view I will give an explanation of mine which preceded.”

Seeing no cause why he should send a challenge to Hamilton, it was not Monroe’s intention to provoke one by anything in his letters. He refers Hamilton to Col. Burr, to make the arrangements suitable to the occasion.

To Monroe’s letter Hamilton replied as follows:

“Sir, The intention of my letter of the 4th in-

stant, as itself imports, was to meet and close with an advance towards a personal interview, which it appeared to me had been made by you.

“From the tenor of your reply of the 6th, which disavows the inference I had drawn, any further step on my part, as being inconsistent with the ground I have heretofore taken, would be improper.”

An impotent conclusion to his amour with Mrs. Reynolds and to his speculative venture with her husband! To the most impartial mind the picture which Hamilton draws of his own character is one so unconscious of his own base tergiversations throughout his vindication, that it involuntarily recalled the rough doggerel lines I often heard in my youth:

“It wired in and wired out,
And left the mind still in doubt,
Whether the snake that made the track
Was going south or coming back.”

In the quotations, so numerous as they are, I have tried to be just, impartial, and judicial,—setting down nothing in malice nor prejudice. From the statements in his vindication and the letters in his appendix to it, it is clear that Alexander Hamilton never conceived, and from his

moral nature was utterably unable to conceive, much less to appreciate, the three great outstanding facts in all human affairs—no man ever told a lie and killed it; no man ever committed a dishonest act and so covered it that it was not brought to light at some future time; no man ever perpetrated a fraud and destroyed all the evidences of it. Why did Hamilton drop out of all consideration Venable and Muhlenberg? All three (Monroe, Venable, and Muhlenberg) took part in the interview, and substantially agree as to what was said and done by Hamilton and by them. Was Hamilton in doubt about Monroe's courage and hoped to win again the confidence of the public by a display of bravery which Monroe would shrink from meeting? The other two were equally involved in the subsequent events. I can offer no solution of this mystery.

In justice to the subject of this writing, let us take a glance at history contemporaneous with Hamilton, which I shall do in my next chapter.

CHAPTER IV

This study has been confined exclusively to the vindication until now. In glancing at the history of Hamilton's time I desire again to mention the dates at which this trouble began. Hamilton first met Mrs. Reynolds "some time in the summer of the year 1791." He plastered her husband's wounded honor twice—December 22d, the plaster costing him \$600 "on account of a sum of one thousand dollars due to me" (Reynolds), and January 3rd, 1791, the plaster costing him \$400 "in full of all demands." Both plasters were applied fully six months before Hamilton first met Mrs. Reynolds. The interview between Hamilton and Monroe, Venable, and Muhlenberg occurred in December, 1792. Hamilton resigned his secretaryship the last of December, 1795. Callender published his two books in 1797, described as a *History of the United States for 1796*, the last, or No. VI, as it is usually called in these documents, some time in the fall of that year, as the preface bears date of July 17, 1797. The vindication was written in refutation of the charges contained in Callender's history, especially those contained in

No. VI, so the vindication was published after July, 1797, more than six years after Hamilton's first tryst with Mrs. Reynolds.

In the intervals between these dates James Reynolds disappeared, and the inference justified by the surrounding circumstances is that he disappeared between the interview in December, 1792, and his resignation in December, 1795. The real cause of this mysterious disappearance has not yet been discovered, but one fact has been made public by Hamilton's vindication and the interviews and the Callender book No. VI—that Reynolds disappeared that Hamilton's official honor might be protected, and possibly that Hamilton might be saved from a criminal prosecution. No history, no reminiscence, no memoir of those times has ever disclosed to the American public the bitterness and the hatred that gave life and venom to the political strife of those days as do these books, No. V and No. VI, which were given to the world as history.

I quote from the preface to No. VI:

“When the fifth number of this book was published, Mr. Alexander Hamilton printed, in Mr. Fenno's gazette, a denial of his connection with

Reynolds. He has now come from New York to complete a satisfactory statement. Like the pot whitewashing the kettle, he has already received from Mr. Wolcott a certificate of his virtue. He is, at present, also soliciting Mr. Monroe and Mr. Muhlenberg, on both of whom he had heaped mountains of calumny. Mr. Hamilton entreats them, to attest his *innocence*, that is to say, their belief of his having *debauched Mrs. Reynolds.*”

Alexander Hamilton was furnishing not only topics for social gossip, but subjects for discussion in commercial as well as in political circles. I now desire to call attention to some letters published in the vindication and in Calender's history, which letters supposedly were written by Reynolds. I will take a short letter from each publication, copying them exactly as they are printed:

From the vindication, page 21:

Philadelphia 7th, April 1792.

Sir.

“I am sorry to inform you my setivation is such. I am indebted to a man in this town about 45 dollars which he will wate no longer on me. now sir I am sorrey to be troubleing you So

offen. which if you Can Oblige me with this *to day*. you will do me infenate service. that will pay Nearly all I owe in this town except yourself. I have some property on the North River which I have Wrote to my Brother sell which as soon as it Come in my hands. I pay you every shilling with the strictest Justice you Oblige me with. the inclose is the Receipt. for the amount

“I am sir with due Regard. your humble servant
James Reynolds.

“Alexr. Hamilton Esqr.”

Examine the spelling, the use of capital letters in the middle of a sentence where they are not correct, and the misuse of words in the letter. Can it be possible that Reynolds was so ignorant, illiterate and so uneducated as this letter indicates? Reynolds disappeared in a mysterious manner, at an unexpected moment, shortly after this letter is dated.

I copy a letter written by Reynolds from the Callender history, No. VI, page 221:

“Thursday one o’clock

“13th December 1792

“My dear Mr. Clingman:

“I hope I have not forfeited your friendship, the last night’s conversation, don’t think any-

thing of it, for I was not myself. I know I have treated * * * friend ill, and too well I am convinced [here about three lines are torn out] to have satisfaction from his at all events, and you onely I trust too. I will see you this evening. He has offered to furnish me and Mrs. Reynolds with money to carry us off. If I will go, he will see that Mrs. Reynolds has money to follow me, and as for Mr. Francis, he sas he will make him swear back what he has said, and will turn him out of office. This is all I can say till I see you.

“I am, dear Clingman, believe me, forever your sincere friend,

“James Reynolds.

“*Mr. Jacob Clingman.*”

Give to these letters a just and impartial comparison. Did the same Reynolds write both letters? If so, point to the internal evidence that proves it other than the name signed to both. If he wrote them both, what object did he have in exhibiting in the letter to Hamilton such ignorance—a lack of even ordinary common school education? Knowing that Reynolds was gone, no one knew where, never to return, did Hamilton forge this letter to furnish internal evidence that he was giving a description full and accu-

rate of the man's character when he called him a reptile and a rascal?

If this inference be not justified by the facts, why did Reynolds change his style, his language, his rhetoric, and his spelling when he wrote to Clingman? The letters "sas" are evidently intended for the word "says," and it is just as evidently a misprint, for he uses the same word in the second line following and spells it correctly.

The letter to Hamilton, beyond all dispute, is a forgery—a forgery by Alexander Hamilton, who knew, as a lawyer, the impossibility of any one proving it to be such.

These two letters never were written by the same man. Callender could have had no motive, no reason, no gain, no protection, from the forgery of the letter. Hamilton had—his character, his social position, his political influence, in fact, everything near and dear to him was at stake, if, indeed, there was anything or anybody near enough to him to be dear, or dear enough to him to be near. Reynolds was gone. He could not be suborned as a witness, and Hamilton therefore was obliged to furnish positive, undisputed internal evidence that he, Hamilton, would not have employed such a reptile and a

rascal in his speculative ventures in Treasury warrants.

I could give other letters written by Reynolds to substantiate this charge. There is a statement dated Philadelphia, 15th December, 1792, signed by James Monroe, Abraham Venable, and F. A. Muhlenberg, published in Callender's history, which I cannot find in the vindication, although Hamilton pretends to have published in the vindication every document relating to its subject. It is indeed a very important document, signed as it is by all three, and therefore the individual statement of each as well as their joint statement. I quote from Callender :

No. VI, pp. 216, 217, 218: "That Reynolds, at the same time, told him [referring to a conversation between Clingman and Reynolds] he had been received by Mr. Hamilton, the morning of that day, when they parted, about sunrise. That he was extremely agitated, *walking backward and forward the room, and striking alternately, his forehead and his thigh; observing to him, that he had enemies at work, but was willing to meet them, on fair ground, and requested him not to stay long, lest it might be noticed.*

“Mr. Clingman also informs us, that he received a note from Mr. Wolcot, to meet him, on Friday morning, at half past nine (which note we have). That he attended, and had an interview with him, in presence of Mr. Hamilton; when he was strictly examined by both, respecting the persons, who were inquiring into the matter, and their object; that he told Mr. Hamilton, he had been possessed of his notes to Reynolds, and had given them up to these gentlemen: and to which, he replied, he had done very wrong. That he also told Mr. Hamilton of the letter he had received from Reynolds, since his enlargement, mentioning that he (Mr. Hamilton) would make Francis swear back what he had said; and to which Mr. Hamilton replied, he would make him unsay any falsity he had declared.

“Mr. Hamilton said, Reynolds was a villain, a rascal, and he supposed, would swear to anything.

“Mr. Wolcot said, that unless Clingman used the same candour to him, that he had done to Clingman, he should not consider himself bound.

“Mr. Hamilton observed, he had had some transaction with Reynolds, which he had before mentioned, as well as Clingman remembers, to Mr. Wolcot, and need not go into detail.

“Mr. Clingman also informs us, that Reynolds told him, since his enlargement, that when he was about to set out to Virginia, on his last trip to buy up cash-claims of the Virginia line, he told Mr. Hamilton, that Mr. Hopkins would not pay upon those powers of attorney; and to which he (Mr. Hamilton) replied, he would write to Hopkins, on the subject.

“Last night we waited on colonel Hamilton, when he informed us of *a particular connection with Mrs. Reynolds*: the period of its commencement, and circumstances attending it; his visiting her at Inskeep’s; the frequent supplies of money to her and her husband, on that account; his duress by them from fear of a disclosure, and *his anxiety to be relieved from it and them*. To support this, he shewed a great number of letters from Reynolds and herself, commencing early in 1791. He acknowledged *all the letters in a disguised hand, in our possession, to be his*. We left him under an impression, our suspicions were removed. He acknowledged our conduct toward him had been fair and liberal: he could not complain of it. He brought back all the papers, even his own notes, nor did he ask their destruction.

“He said, the dismissal of the prosecution

against the parties, Reynolds and Clingman, had been in consideration of a surrender of a list of pay improperly obtained from his office, and by means of a person, who had it not in his power now to injure the department, intimating he meant Duer; that he obtained this information from Reynolds; owned that he had received a note from Reynolds in the night, at the time stated in Mr. Clingman's paper, and that he had likewise seen him in the morning following: said he had never seen Reynolds before he came to this place; and that the statement in Mr. Clingman's paper, in that respect was correct.

"January 2nd, 1793 [This statement, immediately following the one just quoted is signed by James Monroe alone.] Mr. Clingman called on me this evening, and mentioned, that he had been apprised of Mr. Hamilton's vindication, by Mr. Wolcot, a day or two after our interview with him. He farther observed to me, that he communicated the same to Mrs. Reynolds, who *appeared much shocked at it, and wept immoderately*. That she denied the imputation, and declared, that it had been a fabrication of colonel Hamilton, and that her husband had joined in it, *who had told her so*, and that he had given him receipts for money and written letters, so as to

give countenance to the pretence. That he was with colonel Hamilton, the day after he left the jail, when we supposed he was in Jersey. He was of opinion she was innocent, and that the defence was an imposition.”

I shall comment upon a few of the statements that Hamilton made.

In the interview the subject of which is given in this extract: “To support this [referring to Hamilton’s explanation], he shewed a great number of letters from Reynolds and herself commencing early in 1791.”

He had surely forgotten this assertion, made to these gentlemen, when he said in his vindication, published subsequently, that he first met Mrs. Reynolds at his own home “some time in the summer of the year 1791.”

This difference in dates may seem to be a small matter, but it is not. It goes far to prove that Hamilton always made his statements according to the necessity of the occasion. “He acknowledged *all the letters in a disguised hand, in our possession, to be his.*”

Why did he disguise his writing? Was it to escape his guilt, or to destroy its evidence? Was

it fear of detection and consequent exposure? What business was he engaged in, that it required the protection of this cowardly subterfuge?

“Clingman also informs us, that Reynolds told him, since his enlargement, that when he was about to set out to Virginia, on his last trip to buy up cash-claims of the Virginia line, he told Mr. Hamilton, that Hopkins would not pay upon those powers of attorney; and to which he, (Mr. Hamilton) replied, he would write to Hopkins, on the subject.”

Hamilton was then Secretary of the Treasury. Why should Reynolds have gone to him about Hopkins's opinion if Hamilton was not interested in speculation and if his influence was not necessary to control Hopkins and ensure success to the venture? If Hamilton was not a partner in the speculation, his duty to his office and his country, to his official oath and his honor, required him to decline to interfere in Hopkins's discharge of his official duty. Reynolds could protect neither Hamilton nor his own interest in the venture without some influence strong enough to change, or to annul, Hopkins's decision. If Hopkins should refuse

payment of the claims when presented, Hamilton could not afford to issue an order for their payment without producing trouble and his own exposure. It was certainly a very remarkable disclosure as to some business matters between them.

“ * * * said, he had never seen Reynolds before he came to this place; and that the statement in Mr. Clingman’s paper, in that respect, was correct.”

What does this statement mean? In the vindication, published in 1797, Hamilton refers to frequent meetings between Reynolds and him in 1791, of which Mrs. Reynolds was the cause, and how, subsequent to that date, he went to Philadelphia. Then he says that he had never seen Reynolds until his arrival there. No one can fail fully to appreciate the significance of Hamilton’s course in omitting from the vindication this statement by these gentlemen.

Hamilton denounced Reynolds as a low and profligate man, a rascal, a villain, a repile unkenneled, and as an accomplice in Hamilton’s adulterous amour with his, Reynolds’s, wife. The world has seldom produced a human being so base as these epithets describe the character

of Reynolds to have been. But was there any intimacy between uncongenial natures beyond the relation produced by their speculative ventures; or, rather, do men so far apart in social and political life ever become so intimate as the copy of the note that follows would indicate, unless the tie is something more than the debauchery of the wife by the connivance of the husband and the use of that husband as a commercial broker?

Callender, No. VI, page 19: "It is utterly out of my power I assure you, pon my honour, to comply with your request. Your note is returned."

Reynolds evidently had asked for a loan.

If their intimacy had not eliminated all social differences between them, upon what justifiable ground could such a note be written by Hamilton to one so far below him in rank as was Reynolds? It is observable that there is in the first letter not the slightest touch of official dignity nor personal reserve. He is writing to a true, tried, and warm friend. There is in it a slight tinge of unexpressed regret, which "pon my honour" he does not wholly conceal, but he trusts that the intelligence of this dear friend will appreciate

the expression of regret the more deeply in that it is not revealed.

Yet it seems that at this very time Hamilton wanted to get rid of both Mrs. Reynolds and her husband, so "offered, if they would *leave these parts, not to be seen here again, to give something clever.*"

What must have been Hamilton's pain and agony when he found that if he would clean his official character he would have to tear himself from the tender and loving embraces of his fascinating mistress? It has occurred to me, in the critical examination of this vindication and the Callender books, that Mrs. Hamilton must have been the most amiable, the most charitable, and the most angelic woman that had ever lived, and had fully and conscientiously accepted as true her husband's double standard of morals, in domestic as well as political affairs. She would be an excellent model for a statue to Charity, to be erected in some ideal hall of fame, or a statue to the domestic virtues.

Hamilton was naturally vindictive. At times his temper was furious, although generally kept well under control when reflected by spoken words, which could be repeated, and to which at that day a certain personal responsibility was

always attached. It was in his confidential letters only that he poured out the vials of his wrath and gave ample room to his hate, his malice, and to his calumnies. It is inconceivable that such a man could have borne the treatment of which he complained from a rascal, a villain, and a reptile, yet have kept himself in such a Christian frame of mind—ready to forgive, ready to forget, if only the Reynoldses would be gone. Yet, transient as this attachment to Mrs. Reynolds is asserted by him to have been, he put it in the balance against his official integrity, his personal honesty, and the confidence of the public. From the very hour that Mr. Monroe and his colleagues saw Reynolds Hamilton must have known that his honor, his standing, his reputation, everything that is held dear by an honest man and a gentleman was at stake—except the charity of that loving wife.

Upon what basis or proof has the charge of a speculative venture been made against Hamilton, Reynolds being used as his intermediate agent or broker? The financial condition of the country was such that many despaired of the Republic. The soldiers had not been paid; the creditors were clamoring for the payment of their debts; the Government, in truth, was bank-

rupt. It was the day of the speculator. Hamilton, knowing better and more fully than any other man in the whole country, from his official position, the exact state of the Treasury, the amount of the public debt, and also the indebtedness of the different States, concluded that with tact he could make his fortune without being caught in the act. His amour with Mrs. Reynolds suggested her husband to him as his broker, and when his connection with her became so close that it was discovered by her husband, he realized the risk that he was running in committing with the husband a more heinous offense than an "indecorum" with the wife.

I take this extract from Callender, and make no excuse for its length:

Callender, No. VI, pp. 224, 225: "If we consider the magnitude of the object before them, it was highly commendable in the gentlemen concerned in these enquiries to trace the matter as closely as they did. The funding of certificates to the extent of perhaps thirty, or thirty-five millions of dollars, at eight times the price which the holders had actually paid for them, presents, in itself, one of the most egregious, the most impudent, the most oppressive, and the most

provoking bubbles that ever burlesqued the legislative proceedings of any nation. The debt that could have been discharged for ten or fifteen millions of dollars, was funded at forty millions.

“But as the universal suspicion and hatred which the formation of this mass had excited, might, at some future period, endanger its existence, the assumption act was brought forward. This law incorporated into the form of stock those debts contracted by individual states during the war. Hence each of them became, for its own sake, interested in the support of public credit which implicated a riddance of the debt especially due by itself. Thus the certificate funds were inseparably embodied with a powerful and popular ally, under the shelter of whose reputation they might hope for some degree of longevity. This artful measure was pushed through Congress by the same party, who funded the half-crown certificates at twenty shillings. But, even in this project, it is entertaining to notice the blindness and precipitation of conscious guilt. The paper-jobbing junto were in such a hurry to shelter their speculations under the wings of the above assumption law, that they acted the measure in the most profligate

gate or bungling manner which can be imagined. Take notice! They pledged the public faith for twenty-two millions of dollars instead of eleven millions of dollars; for, the latter sum would have settled the claims, if a reasonable degree of time, of judgment, or of method had been employed upon it."

This extract contains a true picture of the financial conditions of the times and of the transactions of men connected with them. A calm and impartial survey of all the parties involved in Hamilton's vindication can lead to but one conclusion—that Reynolds was Hamilton's broker in his speculations in the public debt, which he, as Secretary of the Treasury, had funded. Monroe, Venable, and Muhlenberg, who had heard of these charges against Hamilton, had undertaken, from justifiable patriotic motives, to investigate them.

Hamilton explains. If innocent, and if conscious that no dishonest or disreputable act as Secretary could be proved to have been done by him, why did he not at once confront his accusers with Reynolds and his wife? They had accused Hamilton of fraudulent conduct—dishonest official acts. Instead of taking the only course that

would forever have closed the lips of gossip, of malice, of hatred and of enmity, he sent Reynolds and his wife away.

Reynolds disappeared almost immediately after his discharge from prison. Did his wife have any reason to cause him to disappear? Did Monroe, Venable, Muhlenberg, or Clingman have any reason to desire his flight? Reynolds, and he alone, had in his possession the indisputable evidences of Hamilton's guilt. Hamilton, and he alone, was deeply interested in Reynolds's disappearance. Hamilton's safety from disgrace, and possibly from a public prosecution, could be secured by Reynolds's flight only. To have been confronted with Reynolds, was to bring home to Hamilton his guilt, in all its consequences. His name and his fair fame would have been gone forever. He would lose his page in history. Why was the mass of the correspondence between Hamilton and Reynolds by the desire of Hamilton committed to the flames? He was then Secretary of the Treasury; resigned in 1795; Callender's books were published in 1797; the vindication was given to the public in the early fall of 1797. And what does Hamilton do in the argument so full of prevarications, evasions, and abusive calumnies upon

all these people, coupled with unmanly insinuations, as to Monroe, Venable, and Muhlenberg? I answer my own question:—he simply took refuge behind the petticoats of Mrs. Reynolds, knowing that James Reynolds was too far away to protect those skirts from the cowardly use to which Hamilton had put them.

I shall turn now to the history of the period as to Hamilton's stock-jobbing operations in government certificates. That history will be found in the *Journal* of William Maclay, senator for the short term from Pennsylvania, and was published by his grandson in 1890, some portions of which had been previously published, for distribution among the members and friends of the family, and which had been jealously guarded from public scrutiny by Maclay's descendants. This *Journal*, one of the most remarkable books in the whole range of English literature, begins April 24, 1789, and ends March 3, 1791, when Maclay retired from the senate. It establishes beyond a doubt that William Maclay was the true founder of the Democratic party. It ends before Hamilton began his connection with either Mrs. Reynolds or her husband, and of the information that it contains neither Monroe, Venable, Muhlenberg, nor Callender had any

knowledge. If such knowledge had been theirs, it would not have been necessary to have used Reynolds as a witness, nor for Hamilton to have given publicity to his amour with Mrs. Reynolds.

Page 177: "The business of yesterday (recommendation for funding certificates of the public debt) will, I think, in all probability damn the character of Hamilton as a minister forever. It appears that a system of speculation for the engrossing certificates has been carrying on for some time. Whispers of this kind come from every quarter."

Page 179: "Wadsworth has sent off his small vessels for the southern states on the errand of buying up certificates. Nobody doubts but all commotion originated from the Treasury, but *the fault is laid on Duer but respondeat superior.*"

Page 188: "If I needed proof of the baseness of Hamilton, I have it in the fullest manner. This day his price was communicated in manuscript as far as Philadelphia. Thomas Willing in a letter to the speaker of the Representatives, after passing many eulogiums on Hamilton's plan, concludes, 'For I have seen in manuscript his whole price' and it has been used as the basis

of the most abandoned system of speculation ever broached in our country.”

Page 268: “The most villainous and abandoned speculation took place last winter from the Treasury. Some resolutions have passed the House of Representatives and are come up to us.”

Page 269: “I can see him warping over in the case of the Baron [Steuben’s extra pension case] to get a sum of money on his account *or rather only in his name* which would sink immediately into the jaws of Hamilton and his crew.”

Page 329: “Here are their best interests sacrificed to the vain whim of fixing congress and a great commercial town (so opposite to the genius of the southern planter) on the Potomac and the President has become in the hands of Hamilton, the disclout of every dirty speculation as his name goes to wipe away blame and silence all murmuring.”

Page 331: “The Secretary [Hamilton] and his group of speculators are at last, in a degree triumphant. Everything, even to the naming of a committee, is pre-arranged by Hamilton and his group of speculators.”

Page 377: “I had told the Treasurer [Hamilton] some time ago that I wanted to sell him

some stock. When I came home from meeting I found note from him imploring that he would buy to-morrow. This in a great measure, confirms my former suspicions with respect to the Treasury.’’

In this transaction Hamilton did not use either Reynolds or any other man as a broker. These extracts are surely sufficient to carry conviction to any impartial mind. But if they do not, could that conviction be produced if I piled Pelion on Ossa?

This remarkable *Journal*, self-evidently the utterance of an honest man, draws a picture of Hamilton in comparison with which Callender's books are only daubs. As Maclay retired March 3, 1791, his *Journal* does not touch upon the proceedings between Hamilton and Reynolds, which Hamilton, emboldened by impunity in the past, felt that he could conduct with more openness, and with certainty of greater profit, through an intermediary. Having, there is reason to suspect, discharged Duer, Hamilton selected Reynolds as his agent. If Maclay had remained in the Senate Hamilton's interview with Monroe, Venable, and Muhlenberg would have had a more tragic ending. Possibly Washington

might have heard of these transactions, not only from these gentlemen, but from Maclay, in his official character as Senator. Hamilton's resignation would have been tendered before December, 1795, and Mrs. Reynolds might have escaped the infamous avowal of his amour.

Imagination fails in its usual office when it deals with the conduct and character of such a creature as Hamilton disclosed himself to be in his own vindication. These extracts from Maclay are the evidences of Hamilton's tact and shrewdness in his not asserting in so many words that he had never bought or speculated in government certificates. Maclay was still alive, living in or near Philadelphia, and might have been called as a witness. What then?

CHAPTER V

During the War of the Revolution many citizens, true to their allegiance to the English crown, open and avowed in their loyalty, were called Tories. Many of them desired independence for the colonies in some measure, but did not desire, and would not agree to, an entire severance of all the political ties that bound them to the mother country. As soon as the Federal constitution was finally adopted by all the colonies, now become states, a party, under the leadership and formative power of Alexander Hamilton, came into existence, with ideas of government almost as much English as American. This party was created by Hamilton, and was called the Federalists, or Federal, party. Hamilton inspired and guided its every movement, its every thought, and its every ambition.

Alexander Hamilton begat the Federal party, the Federal party begat the Whig party, the Whig party begat the Republican party, and these three parties were one and the same yesterday, they are one and the same to-day, and they will be one and the same forever and forever. Hamilton's sole object was to create a

government outside the Federal constitution, and to-day that is the chief object of the Republican party. This new government was to be made out of the doctrine of "implied powers." Under the constructive decisions of the Supreme Court of the United States, which always has been merely the exponent of Hamilton's political opinions, as it is to-day the exponent of those opinions, no restrictions limit the kind of government that may be established under the doctrine of implied powers. John Marshall was the judicial exponent of Alexander Hamilton—no more, no less.

A few quotations from Maclay's *Journal* will give some startling facts to my readers.

John Adams was then Vice-President. The subject before the senate was the official form of addressing the President.

Page 10: "Mr. Adams rose in his chair and expressed the greatest surprise that anything should be objected to on account of its being taken from the practice of that government under which we had lived so long and happily formerly; that he was for a dignified and respectable government and as far as he knew the sentiments of people, they thought as he did: that

for his part he was one of the first in the late contest [the Revolution] and if he could have thought of this he never would have drawn his sword."

Page 12: "The unequivocal declaration that he would never have drawn his sword etc. has drawn my mind to the following remarks: that the motives of the actors in the late Revolution were various cannot be doubted. The abolishing of royalty, the extinguishment of patronage and dependencies attached to that form of government, were the exalted motives of many revolutionists and these were the improvements meant by them to be made of the war which was forced on us by British aggression—in fine the amelioration of government and bettering the condition of mankind. These ends and none other were publicly avowed and all our constitutions and public acts were formed in this spirit yet there were not wanting a party whose motives were different. They wished for the loaves and fishes of government and cared for nothing else but a translation of the diadem and sceptre from London to Boston, New York, or Philadelphia, or, in other words, the creation of a new monarchy in America and to form niches for themselves in the temple of royalty."

Page 389: "Annihilation of state government is undoubtedly the object of these people."

Page 116: "Grayson made a speech. It was not long but he had in it this remarkable sentence—the matter predicted by Mr. Henry is now coming to pass—consolidation is the object of the new government and the first attempt will be to destroy the senate, as they are the representatives of the state legislatures."

Page 393: "The new constitution by the instrumentality of the judiciary etc. aims at the government of individuals, and the states, unless as to the conceded points and with regard to their individual sovereignty and independence, are left upon stronger ground than formerly and it can only be by implication or inference that the general Government can exercise control over them as states. Any direct or open attack would be termed usurpation. But whether the gradual influence and encroachments of the General Government may not gradually swallow up the state governments is another matter."

Page 392: "Henry of Maryland joined with him; said the constitution of the United States implied everything; it was a most admirable system. Thus did these heroes vapour and boast of their address in having cheated the people

and establishing a form of government over them which none of them expected.”

These are sufficient—they tell the tale as never before in an American history. Once more:

Page 393: “The general power to carry the constitution into effect by a constructive interpretation would extend to every case that Congress may deem necessary or expedient.”

Substitute the federal supreme court for congress, and you have political conditions as they are to-day.

These are Alexander Hamilton's political doctrines, not avowed or put into acts until he became Secretary of the Treasury. If Ribot or some other scientist of Europe or of America is yet searching the annals of the human race, studying the traits of human character, with the purpose of proving the laws of heredity to be absolutely true, and is not yet fully convinced of its truth, fixed as the laws of the Medes and Persians, let him devote a few spare moments to an impartial study of Alexander Hamilton's career, private and public, and of the life of his

child, the Federal party, of his grandchild, the Whig party, and of his great-grandchild, the Republican party, and he will find nothing truer than the old maxim: Like father, like son; or, this old saying: Water never rises above its source. Alexander Hamilton resurrected the doctrine of "implied powers." In England that doctrine was called the "prerogative of the crown." Its exercise cost Charles I his head. Its constant exercise brought about the revolution of the seventeenth century in England. In France it was crystallized into a living fact by Louis XIV, who proclaimed: "I am the state, or the state is myself." It was the cause of the French Revolution.

In this country the doctrine of implied powers was in reality the real cause of our colonial grievances, and was in very truth the mother of the American Revolution. It has appeared in all countries, and it has the singular power to change its name and its appearance to suit its surroundings to the nature of the government under which it operates. It is the backbone of usurpation by the executive, as it is the source of his unlawful power. Under our written constitution the doctrine of implied powers must first be put into the form of a law, which, when

tested by our federal supreme court, is decided to be constitutional. Thus through the operation of a judicial opinion another power is given to congressional legislation. In this way doubtful powers can be made certain, and their exercise be justified, by a judicial decision. In the case of the doctrine of "implied powers" in our government under a written constitution, power actually denied to Congress has been decided by the Supreme Court to have been impliedly granted. Where is the limit to this constructive enlargement of congressional power? There can be none, unless the Supreme Court sees fit to fix it.

But when will that court draw the line of demarcation, and where? Alexander Hamilton's fame rests on two things:—his essays in defense of the Constitution in *The Federalist*; and his resurrection of the royal doctrine of implied powers. Although there is not a dot of an "i" nor the cross of a "t" in our entire organic law that belongs to him, yet he defended it with masterly ability. He called it a rope of sand—because he could make no better law. He attended the constitutional convention at intervals, and then only for very short periods.

While many public men desired the independ-

ence of the colonies, and in every way contributed to the success of the conflict between Great Britain and the colonies, yet the antagonism of their opinions as to the nature and powers of the government, after the colonies had won their independence and had emerged from the conflict, each an independent, separate state or sovereignty, divided them into two radical and distinct parties. The same antagonisms exist to-day. One party desired an imperialism under the form of a republic. These men became Federalists, then Whigs, and now they are Republicans, of whom Alexander Hamilton, the father, is still the inspiration and the idol. The other party demanded a true and genuine republic, in form, in power, and in nature. These men became Democrats, and they are still Democrats, of whom Senator Maclay, of Pennsylvania, was the true organizer and founder, but of whom Jefferson became the real leader. The principles which formed these men into distinct and different political parties are the same to-day.

I again quote from Bassett, Nation series, page 28:

“Hamilton’s scheme had also a political pur-

pose, which was more important than its financial side. He saw that pursuing a strong fiscal policy he would draw to his party-following the moneyed classes. In this respect he profited by his knowledge of English history, for he knew that since the days of Walpole the wealthy part of the population had exercised a political influence out of proportion to its numbers. The real object in forming a written constitution was to define the rights and powers so that the government could not usurp or exercise any power not expressly granted—in other words, forever to kill, destroy, and exclude from the American system the doctrine of implied powers, which in one form or another, as a prerogative of kings, or as the necessity of government, had caused so much bloodshed in England. I quote *Cromwell Army*, by C. H. Firth, chap. 'Politics in the Army,' page 354: 'The demand for security for the future necessarily led to direct interference in the political settlement of the Kingdom. For the soldiers held that they could not be secure if the King was restored to his authority without proper restrictions or the parliament left in possession of the unlimited powers it had abused. All wise men may see,' declared the *Army*, 'that parliament privileges as well as

royal prerogatives may be perverted or abused to the destruction of those greater ends for whose protection and preservation they were intended, to wit: the rights and privileges of the people and safety of the whole.' "

Firth, page 355, referring to the "Heads of the Proposals of the Army," says: "Its chief characteristic was that it aimed at permanently limiting not only the power of the King but also the power of parliament, and, therefore, it naturally failed to commend itself to either."

The basic principle of the American Revolution involved the sovereignty of the people. Consequently the people, and the people alone, had the right to make the government by which they were to be governed, according to a form to be selected by themselves. Under the operation of this fundamental principle the government was their agent. The government ceased then and there to be sovereign, and became based on the personality of man.

This fundamental principle was the beginning of a new dispensation in politics. It owes its origin to the political side of Calvinism, for John Calvin, and he alone, discovered the personality of man. He found man a slave; he

made him a freeman. He found him a subject; he made him a citizen.

The nullification of this feature of the federal constitution was the moral treason of Alexander Hamilton and John Marshall. To create a corporation under the old theory was an act of sovereignty; hence Hamilton advocated a federal bank, although he knew personally that the power to organize a bank expressly had been denied to the federal government. John Marshall announced that a charter passed by a state government was a contract, therefore protected by the federal constitution. The next step was to decide that the federal congress had the implied power to create a corporation, and Marshall did so decide. The work was accomplished. The treasonable design of Alexander Hamilton and John Marshall was a judicial success, and the grand work of the American Revolution was undone, and once more in defiance of God and human rights, Man was sunk to a subject, and Government, with its divine right to reign, was announced as the monarchy of the world. Consequently the old conflict that has surged through all human history—the conflict between freedom and tyranny—has not yet been settled.

In this country—free America—Hamilton

and Marshall threw our government back upon the highway of English history, behind the parliament that made the English monarchy a constitutional government, to the time of Charles I, who lost his head by asserting that the prerogative of the king contained implied powers of sovereignty, with respect to which he was the sole judge by right divine.

It is necessary to this argument to quote in full the clause of the federal constitution that gives in detail the powers granted to congress. They are as follows:

“SECT. VIII.

“The Congress shall have power

“1. To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defense and general welfare of the United States: but all duties, imposts, and excises shall be uniform throughout the United States:

“2. To borrow money on the credit of the United States:

“3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

“4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

“5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

“6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

“7. To establish post offices and post roads:

“8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors the exclusive right to their respective writings and discoveries:

“9. To constitute tribunals inferior to the supreme court:

“10. To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations:

“11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

“12. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:

“13. To provide and maintain a navy:

“14. To make rules for the government and regulation of the land and naval forces:

“15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions:

“16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress:

“17. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the states in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings: And

“18. To make all laws which shall be necessary and proper for carrying into effect the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.”

The last clause, "and to make all laws which shall be necessary and proper for carrying into effect the foregoing powers and all other powers vested by this Constitution in the government of the United States or in any department or officer thereof," has been called "the elastic clause." A better name for it would be "Trojan Horse," because it holds in itself that enemy to the state—the doctrine of implied powers. A government outside of our written constitution, with its expressly enumerated powers, has been built up in this country, from those words, by Hamilton and Marshall, a government under which its citizens now live, which was never thought of by the members of the federal convention. Take each subdivision of this section: can any man draw the conclusion that a bank was necessary to carry into effect the power mentioned? A bank could not be organized without an act of incorporation, defining and limiting its powers and their exercise. An act of that sort was both a financial and governmental necessity. Kasson, in his *Evolution of the Federal Constitution*, page 126, gives an enumeration of twenty-one different powers proposed by Madison to the convention. Among them was the power "to grant charters of incor-

poration.” And Kasson then says that the powers proposed were referred to the committee of detail, but were not reported.

Kasson, page 149: “There is no trace in the recorded debates of the belief of a single member that under the power to borrow money congress could exercise the power of making their bills a legal tender for private debts. There is rather the contrary indication that they considered this authority non-existent unless it should be enumerated among the express powers granted. The authority as assumed in later years appears to have been an unwarranted deduction from the general power to provide for carrying into effect other powers that were granted. The Convention, while prohibiting the power to the States, supposed it sufficient to simply withhold the authority from the Congress of the United States.”

This analysis as to this particular power, if applied to any or all the other powers, would reach the same logical conclusion as to the creation of a national bank under any of the other powers expressly enumerated and granted in section VII. But what are the facts as to the

action of the convention upon this important subject, with which Hamilton was himself as well acquainted as any man in that convention or out? He knew well, thoroughly, the mind of the convention on the matter. Bearing in mind that Hamilton was a member of the convention and signed the Constitution, what are the facts relative to this subject?

I quote from Madison's letter to Edmund Pendleton, *Madison Papers*, Vol. 1, page 104-5:

"Yesterday was opened for the first time the bank instituted under the auspices of Congress. The competency of Congress to such an act had been called in question in the first instance; but the subject not lying in so near and distinct a view, the objections did not prevail. On the last occasion the general opinion, though with some exceptions, was that the confederation gave no such power, and that the exercise of it would not bear the test of a forensic disquisition and consequently would not avail the institution. Something like a middle way finally produced an acquiescing, rather than an affirmative vote. A charter of incorporation was granted, with a recommendation to the States to give it all the necessary validity within their respective juris-

dictions. As this is a tacit admission of a defect of power, I hope it will be an antidote against the poisonous tendency of precedents of usurpation."

This fact is furnished by the history of the struggle under the confederation. It is very significant in its political nature, and important in its bearing upon the convention, which did not meet till 1787.

Madison Papers, Vol. 3, page 1,576: "Mr. Madison suggested an enlargement of the motion into a power 'to grant charters of incorporation where the interest of the United States might require and the legislative provisions of individual states may be incompetent.' Col. Mason was for limiting the power to the single case of canals. He was afraid of monopolies of every sort, which he did not think were by any means already implied by the Constitution, as supposed by Mr. Wilson."

The motion being so modified as to admit a distinct question, specifying, and limited to, the case of canals, the vote stood Pennsylvania, Virginia, Georgia, aye 3; the others, 8, no. "The

other part fell, of course, as including the power rejected."

These are the facts. They are the only true guides to a correct exposition of the powers of congress. The facts that underlie contracts, on account of which laws are enacted to redress grievances produced by them or to protect rights which have been invaded, alone can furnish the rules to expound and interpret those laws and contracts; and when they are ignored, discarded, or denied the exposition points to a direct usurpation of power, having its birth in the imagination,—a mental bastard, *sui generis*. The federal constitution was germinated out of the historic facts that preceded the revolution of 1776. When the Constitution was before South Carolina for adoption or for rejection, Colisworth Pinckney used these words: "By this settlement we have secured an unlimited importation of negroes for twenty years. The general government can never emancipate them, for no such authority is granted, and it is admitted on all hands that the general government has no powers but what are expressly granted by the Constitution."

The statement made by Pinckney was of fact, and was so recognized by every member of the

federal convention. When the members returned to their several states to plead for the adoption of the Constitution, not one of them would have dared to intimate in any way the doctrine of implied powers. If he had, the constitution would never have been adopted by a single state. How did it happen that this iniquitous doctrine,—which in England had cost Charles I his head, in France under Louis XIV had sowed the seeds that blossomed in their full growth when they produced the French Revolution, and which in this country will yet produce a similar revolution, in order to recover from the grasp of the federal supreme court those rights and principles for which our patriotic forefathers rebelled against the British crown and fought the war of 1776,—how is it that a doctrine so iniquitous became fastened upon us? That question in a measure can be answered by the words of Hamilton himself, to be found in Vol. 3, page 106, *Madison Papers*:

“No man’s ideas were more remote from the plan than his own were known to be; but is it possible to deliberate between anarchy and convulsion on one side and the chance of good to be expected from the plan on the other?”

Note those significant words, "the chance of good." Hamilton was prepared to sign the Constitution on this ground, and on none other, little dreaming that he would ever have the "chance of good" that came to him as Secretary of the Treasury to start that radical movement that, under John Marshall, was to wrench the Constitution from constitutional government, then create a government by judicial opinion outside that constitution, to gratify Hamilton's British proclivities, and to make the federal supreme court the political and judicial autocrat of democratic America. The American people, through the doctrine of implied powers, are living not under the federal constitution, but under the government of the federal supreme court,—a government created of its own imagination, and in defiance of the constitution which that court's judicial oath required it to support and to defend. And that court is to-day, and never has been other than, the exponent of Alexander Hamilton's political principles, through John Marshall's judicial decisions, which have been accepted and followed as infallible.

Madison Papers, Vol. 3, page 1507: "Mr. Hamilton said, that he had been restrained from

entering into the discussions by his dislike of the scheme of government in general; but as he meant to support the plan to be recommended as better than nothing, he wished in this place to offer a few remarks.”

The impudent vanity of these words is refreshing when one calls to mind that Hamilton was addressing the most remarkable body of men of brains, culture, and sagacity that ever assembled on this globe, and at the same time showing to those men his cloven foot, which was then limping back to England. During the Revolution he fought for the colonies, but as soon as their independence was won and acknowledged his loyalty to the monarchical principles and form of the English government burst forth in all its pristine vigor, refreshed, rejuvenated, and reinvigorated by the rest of the Revolutionary struggle. I will close this chapter with the words of Pierce Butler, of South Carolina, “We were always following the British Constitution when the reason of it did not apply.”

CHAPTER VI

Hamilton's own words are indisputable evidence of his political principles. They show why he resurrected from its English grave the crown's prerogative, brought it to America, and then gave to it the name of "implied powers." I quote from *Madison Papers*, Vol. 2.

Page 885, speaking of the states, Hamilton said: "They are not necessary for any of the great purposes of commerce, revenue or agriculture, subordinate authorities, he was aware, would be necessary. There must be district tribunals—corporations for local purposes. But *cui bono* the vast and expensive apparatus now appertaining to the states.

"In his private opinion he had no scruple in declaring, supported as he was by the opinion of so many of the wise and good, that the British government was the best in the world; and that he doubted much whether anything short of it would do in America."

Page 888: "Let one branch of the legislature hold their places for life or at least during good behaviour. Let the Executive, also, be for life."

Page 889: "It will be objected, probably, that such an Executive will be an elective monarch and will give birth to the tumults which characterize that form of government. He would reply that 'monarch' is an indefinite term. It marks not either the degree or duration of power. If this executive magistrate would be a monarch for life, the other proposed by the report from the committee of the whole would be a monarch for seven years. The circumstances of being elective was also applicable to both. It had been observed by judicious writers, that elective monarchies would be the best, if they could be guarded against the tumults excited by the ambition and intrigues of competitors. He was not sure that tumults were an inseparable evil. He thought this character of elective monarchies had been taken rather from particular cases than from general principles."

Page 890: "But he sees the Union dissolving or already dissolved—he sees evils operating in the states which must soon cure the people of their fondness for democracies—he sees that a great progress has been already made and is still going on in the public mind. He thinks, therefore, that the people will in time be unshackled from their prejudices, and whenever

that happens they will themselves not be satisfied at stopping where the plan of Mr. Randolph would place them, but be ready to go as far at least as he proposes."

Page 905: "He had not been understood yesterday. By an abolition of the States, he meant that no boundary could be drawn between the national and state legislatures—that the former must therefore have indefinite authority. If it were limited at all, the rivalry of the states would gradually subvert it. As states he thought they ought to be abolished. But he admitted the necessity of leaving in them subordinate jurisdictions."

If the states were abolished the government would indeed be a really national government, not federal, acting directly upon the people, regardless of state rights, and touched with the poison of the English disease, from which, in the secret chambers of his profound intellect, Hamilton entertained marvelous hopes in the future. Under the influence and the guidance of Hamilton's political principles, by the decisions of the federal supreme court at the present rate of the development and application of the doctrine of implied powers, the states soon will be

abolished—but empty shells on our political ocean. In only a few more years, if the Supreme Court does not go back to the Constitution, the states will be in American history what Junius is in English literature—*stat nominis umbra*. The senate to-day represents the states and their sovereignty, and that fact alone is indisputable proof that our government is a federal union. The dullest man in the convention could see the drift of Hamilton's thoughts and intentions—that the states would not, could not, be ignored in their sovereignty. That was the reason that Hamilton advocated their abolition.

From these quotations, coupled with his opinion that the chief executive of our government should hold office for life,—a republican king under a pretended democratic constitution,—and a senate whose members should hold their seats for a similar term, or during good behavior,—a republican house of lords,—you have the picture of Hamilton as a statesman painted by his own hand, a picture by a man that fought during the Revolution, in open and hostile rebellion, that these very institutions be not fastened upon the colonies. When the colonies by their blood had won their independence and had become independent sovereignties, Hamilton advocated

the restoration of the institutions against which he had fought. Let us take a glance at this man, advocating in *The Federalist* the adoption of this same constitution, and you will have a picture of him as an advocate ready to engage in any cause. The picture will be in strong contrast to the eulogies and the biographies of Hamilton by writers who have taken him at his own estimate, without reflection or without critical examination of the facts. With the vast majority of men mental attainments are not the result of digestive thought, but the reality of a retentive memory only. Their minds are only a warehouse, into which they gather the thoughts of other men, to be used by them as occasion demands. They read mechanically, and they think automatically with their memories. Their investigations travel the old beaten highway of accepted opinion, and if they accidentally stumble upon a new fact they are so enraptured with the discovery that they neither observe its bearing nor ascertain its truth. Even Hudibras has told the story thus:

“That we should all opinions hold authentic,
that we can make old.”

The Federalist (Dawson's edition), page 50:

“So far are the suggestions of Montesquieu

from standing in opposition to a general union of the states that he explicitly treats of a Confederate Republic as the expedient for extending the sphere of popular government and reconciling the advantages of monarchy with those of Republicanism.”

Here follows a quotation from Montesquieu :

“It is very probable that mankind would have been obliged, at length, to live constantly under the government of a single person, had they not contrived a kind of constitution, that has all the internal advantages of a Republican, together with the external force of a Monarchical government. I mean a Confederate Republic. This form of government is a convention by which several smaller states agree to become members of a larger one, which they intend to form. It is a kind of assemblage of societies that constitute a new one, capable of increasing by means of new associations, till they arrive to such a degree of power as to be able to provide for the security of the United body. A Republic of this kind, able to withstand an external force, may support itself without any internal corruptions. As this government is composed of small Republics, it enjoys the internal happiness

of each; and with respect to its external situation it is possessed by means of the association, of all the advantages of large monarchies.”

I have thought proper to quote at length these interesting passages, because they contain a luminous abridgment of the principal arguments in favor of the union, and must effectually remove the false impressions which a misapprehension of other parts of the work was likely to make. And could Hamilton himself have written a stronger argument to refute his doctrine of implied powers than is stated in these extracts?

The Federalist, Dawson's edition:

Page 108: “But let it be admitted, for argument's sake, that mere wantonness and lust of domination would be sufficient to beget that disposition; still it may be safely affirmed, that the sense of the constituent body of the National representatives, or, in other words, of the People of the several States, would control the indulgence of so extravagant an appetite. It will always be far more easy for the State Government to encroach upon the State authorities, than for the National Government to encroach

upon the State authorities. The proof of the proposition turns upon the greater degree of influence which the State Governments, if they administer their affairs with uprightness and prudence, will generally possess over the People; a circumstance which at the same time teaches us, that there is an inherent and intrinsic weakness in all Federal Constitutions; and that too much pains cannot be taken in their organization, to give them all the force which is compatible with the principles of liberty."

Page 199: "An entire consolidation of the States into one complete National sovereignty would imply an entire subordination of the parts; and whatever powers might remain in them, would be altogether dependent on the general will. But as the plan of the Convention aims only at a partial union or consolidation, the State Governments would clearly retain all the rights of sovereignty which they before had, and which were not, by that act, *exclusively* delegated to the United States. This exclusive delegation, or rather this alienation, of State sovereignty, would only exist in three cases: where the Constitution in express terms granted an exclusive authority to the Union; where it granted in one instance an authority to the

Union, and in another prohibited the States from exercising the like authority: and where it granted an authority to the Union, to which a similar authority in the States would be absolutely and totally *contradictory* and *repugnant*."

Pages 597, 598, 599: "It has been several times truly remarked, that Bills of Rights are, in their origin, stipulations between kings and their subjects, abridgements of prerogative in favour of privilege, reservations of rights not surrendered to the prince. Such was MAGNA CHARTA, obtained by the Barons, sword in hand, from King JOHN. Such were the subsequent confirmations of that charter by succeeding princes. Such was the *Petition of Right* assented to by CHARLES I, in the beginning of his reign. Such, also, was the Declaration of Right presented by the Lords and Commons to the Prince of Orange, in 1688, and afterwards thrown into the form of an Act of Parliament called the Bill of Rights. It is evident, therefore, that, according to their primitive signification, they have no application to Constitutions professedly founded upon the power of the People, and executed by their immediate representatives and servants. Here, in strictness, the People surrender nothing; and as they retain

everything, they have no need of particular reservations. 'WE, the PEOPLE of the United States, to secure the blessings of liberty to ourselves and our posterity, do *ordain* and *establish* this Constitution for the United States of America.' Here is a better recognition of popular rights, than volumes of these aphorisms which make the principal figure in several of our State Bills of Rights, and which would sound much better in a treatise of ethics, than in a Constitution of Government.

"But a minute detail of particular rights is certainly far less applicable to a Constitution like that under consideration, which is merely intended to regulate the general political interests of the Nation, than to a Constitution which has the regulation of every species of personal and private concerns. If, therefore, the loud clamours against the plan of the Convention, on this score, are well founded, no epithets of reprobation will be too strong for the Constitution of this State. But the truth is, that both of them contain all which, in relation to their objects, is reasonably to be desired.

"I go further, and affirm, that Bills of Rights, in the sense and to the extent in which they are contended for, are not only unnecessary in the proposed Constitution, but would even be dan-

gerous. They would contain various exceptions to powers not granted; and on this very account, would afford a colourable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why, for instance, should it said, that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed? I will not contend that such a provision would confer a regulating power; but it is evident that it would furnish, to men disposed to usurp, a plausible pretence for claiming that power. They might urge with a semblance of reason, that the Constitution ought not to be charged with the absurdity of providing against the abuse of an authority, which was not given, and that the provision against restraining the liberty of the press afforded a clear implication, that a power to prescribe proper regulations concerning it was intended to be vested in the National Government. This may serve as a specimen of the numerous handles which would be given to the doctrine of constructive powers, by the indulgence of an injudicious zeal for Bills of Rights."

Were these Hamilton's real opinions, or were they merely written and published by him for a

definite purpose, like the argument of the paid advocate? The question is pertinent, because when he became Secretary of the Treasury these opinions were all dropped, and his official acts showed his true opinions on government and the federal constitution. Hamilton ought to have gone to England after the Revolution. His magnetic character and his brilliant intellect would have soon found ample room for his towering ambition.

Did any other public man of that day state the organic nature of our government under the Constitution in such clear language, or prove so indisputably that the government was not a national government?

But this significant statement on this subject is to be found:

Page 185: "It may safely be received as an axiom in our political system, that the State Governments will, in all possible contingencies, afford complete security against invasions of the public liberty by the National authority. Projects of usurpation cannot be masked under pretences so likely to escape the penetration of select bodies of men, as of the People at large. The Legislatures will have better means of in-

formation. They can discover the danger at a distance; and possessing all the organs of civil power, and the confidence of the People, they can at once adopt a regular plan of opposition, in which they can combine the resources of the community. They can readily communicate with each other in the different States; and unite their common forces, for the protection of their common liberty.”

In no number of *The Federalist* can any one detect even a hint of the doctrine of implied powers. In his discussion of this “elastic clause” he hints in the most adroit manner at the powers of congress to carry into practical effect the powers granted in this entire section; but he uses words to conceal his ideas.

When Hamilton proposed the incorporation of a national bank Washington at first had serious doubts on the subject, so asked the opinion of his cabinet. Why? As president of the convention he had kept a watchful eye upon all its proceedings. He knew that Madison had proposed by resolution to grant the power to congress to create corporations, and that the resolution had been lost by a very large majority. Hamilton was a member of that convention, so

knew the same fact. Hamilton proposed to incorporate a national bank; hence Washington doubted.

Jefferson strongly opposed the measure. Our subsequent history is indisputable proof that a national bank is not, and never was, a necessity to the government in the conduct of its fiscal affairs. Suppose a federal bank were in existence to-day, with its vast subtle, undetected influence in our public affairs through Congress and in other ways, what would be our political condition, not only at Washington, but throughout this broad land, where there are open and undisguised corruption in high places, fawning sycophancy and cringing cowardice, when public decency cannot walk the streets of our federal capital without blushing, and while a politician to be honest in public life is self-evident proof that he is an impracticable in practical politics? But the bank was proposed with a well defined object in his view.

His point gained, this measure carried, Hamilton supported by Washington's supreme influence and by public approval, the doctrine of implied powers, concealed under the adroit argument of fiscal necessity, burst forth fully grown like Minerva from the brain of Jupiter. What

then became of the position that the Constitution had only created a government of enumerated powers? The true political object of Hamilton's measure was to build up a government outside the federal constitution and by that means to fling our government back along the pathway of English history, until possibly Hamilton might realize his hope of seeing his model of the best government on earth in practice here despite the restrictions set forth in *hac verba* in the constitution itself.

I quote from Gordy's *Political Parties*, Vol. 1, page 130:

"The bill to incorporate a national bank was first introduced in the senate. When it reached the house, it was opposed by Madison with great ability, on constitutional grounds. He declared that 'the exercise of the power asserted in the bill involves all the guilt of usurpation and establishes a precedent of interpretation,' leveling all the barriers which limit the powers of the general government and protect those of the State governments."

Gordy, page 131: "Hamilton doubtless believed, and rightly, that a bank would be of great service to the government in performing the

duties imposed upon it by the Constitution. But the political purposes to be served by it were probably quite as important from his point of view. We remember how unwilling he was to withhold from the owners of property a means of defending themselves against the violence and turbulence of democracy. Hamilton doubtless wished by the incorporation of a Bank to array upon the side of the government all of the wealthy men whose pecuniary interests in the bank would give them an interest in supporting the government. But what he probably wished to accomplish most of all was to bring into play the implied powers of the Constitution."

Gordy, page 133: "Hamilton, despite his fundamental allegiance to order, was devoted to liberty, but he thought the centrifugal tendencies of society were so powerful that liberty would degenerate into anarchy unless it should be kept in bounds by a strong government—a government in which the intelligent and property owning classes should be given so large a share of power that they could be used as a dike against the rising tide of democracy."

Gordy, page 135: "Jefferson's opinion began as follows: 'I consider the foundation of the Constitution as laid on this ground—that all

powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States or to the people. To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power no longer susceptible of any definition.' "

Gordy, page 136: "In brief, Jefferson interpreted this clause as if it had been written as follows—And Congress shall have power to pass all laws which may be absolutely and indispensably necessary for carrying into effect the foregoing powers."

As to Hamilton, Gordy, page 137, comments as follows:

"From his point of view, to prove the constitutionality of the bill providing for a bank, no more was necessary than to show that a bank would be useful to the government in borrowing money or collecting taxes, and that the Constitution had not prohibited Congress from creating one."

Yet Hamilton did know it to be an actual fact

that the federal convention had in the most positive manner flatly refused to grant that very power to congress, by a very large majority.

Gordy, page 138: "They [Jefferson and Madison] saw a plain connection between Hamilton's speech in the federal convention and his financial policy and the theory of constitutional interpretation upon which it was based. Upon such facts as foundation for such opinions it was certainly not unnatural for Jefferson and Madison (to say nothing of men of less discernment) to conclude that Hamilton and the party which recognized him as its leader intended to subvert the Constitution, either openly or practically, by interpretation."

Gordy, page 139: "This opinion was strengthened during the next session of Congress when Hamilton submitted to that body his report on manufactures. According to the doctrine of that report, Congress has unlimited power to do anything which can be done by money to promote the general welfare."

Such an interpretation of the Constitution conferred upon Congress the power which in his convention speech Hamilton had declared ought

to belong to it. According to that speech, Congress ought to have the right to pass laws on any subject whatever; according to the report, Congress had the right to pass laws on any subject that requires the application of money. No wonder Madison declared that according to that interpretation, the government is no longer a limited one, possessing enumerated powers, but an indefinite one, subject to particular restrictions.

Upon the subject of enumerated powers the Supreme Court has rendered a recent opinion which is so refreshing that I can not resist the temptation to quote it. In *Hodges vs. U. S.*, 203 U. S. R. 16, Justice Brewer used these words: "Notwithstanding the adoption of these three amendments the national government still remains one of enumerated powers and the tenth amendment which reads—'the powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states respectively or to the people' is not shorn of its vitality." To that opinion Justice John Marshall Harlan dissented. What a revival of ancient history is contained in these words! Justice Brewer must have found this nugget of constitutional gold in the rubbish of

•

the lumber room of judicial history. What was he doing in that room? Did he bear a permit from John Marshall? If not, he was an officious intruder. Then, he deserves a reprimand for such a blasphemy on the name and fame of John Marshall.

The following very striking words are taken from MacDonald's *Jacksonian Democracy*:

Page 77: "The advocates of strict construction in 1828 felt, though not all of them clearly perceived, that their opponents had shifted their ground, and that instead of seeking the authority for federal action in the words of the Constitution, or in a reasonable implication therefrom, loose construction had come to mean the right of the Federal government to do whatever was not forbidden by the Constitution, provided the act was deemed to be for the general good. If such a theory of constitutional construction were to prevail and the original notion of the Constitution as a grant of powers, under which everything not granted was withheld, were to be replaced by the theory that everything not withheld was granted, the federal government would be admittedly supreme, and the reserved rights of the states would speedily become only a form of words."

From John Fiske, a Massachusetts man, Harvard bred, it was hardly to be expected, of all the men who have written about Hamilton, the most just and critical estimate of his public character and career and of the aim of his political principles. But such is the fact, as is clear from his brilliant essay on Hamilton, from which I quote.

Fiske's *Essays*, Vol. 1, "Hamilton," page 115:

"He was a devoted friend to free government; not, however, to that kind of free government in which the people rule, but the kind in which they are ruled by an upper class, with elaborate safeguards against the abuse of power."

Fiske, page 113: "He had already pondered deeply on those subjects and had already conceived the scheme of an alliance of interests between the federal government and the moneyed class of society. One of the instruments by which the alliance was to be effected was a national bank, which was to be a corporation in private hands, but to some extent supported and controlled by congress."

Fiske, page 130: "Every day showed more clearly that Hamilton's aim was to insure the stability of the government through a firm

alliance with capitalists, and the fear was natural that such a policy, if not held in check, might end in transforming the government into a plutocracy—that is to say, a government in which political power is monopolized by rich men and employed in furthering their selfish interests without regard to the general welfare of the people. Those who expressed such a fear were more prescient than their Federalist adversaries believed them to be, for now, after a lapse of a hundred years, the gravest danger that threatens us is precisely such a plutocracy. It has been one of our national misfortunes that for three-quarters of a century the mere maintenance of the Union seemed to call for theories which, when put into operation, are very far from making a government that is in the fullest sense ‘of the people, by the people, for the people.’

“The only party that ever extricated itself from the dilemma and stood at one and the same time unflinchingly for the Union and against paternal government in every form was the party of Jackson and Van Buren, between 1830 and 1845. But with Hamilton paternal government was desirable not only as a means of strengthening the Union but as an end in itself.

He believed that a part of the people ought to make laws for the whole."

What did Fiske intend to say, which he lacked the moral courage to publish to the world? Only this, that Hamilton meant that by a national bank he would build up classes of men, in business and in politics, who would corrupt the people, by money to get office, and control the government, and by money corrupt the people, and thus retain control of the government.

Why has this unscrupulous creature been fondled and dawled like an infant in its swaddling clothes, guarded from every wind that blows, by the men that pretend to write history for the American youth? Why is it that his character, public and private, has been protected from the shafts of truth? This very protection to him has been the potent means of concealing from the people his iniquitous doctrine of implied powers. "Old Hickory" understood, and appreciated to the full, the extent of the evil that Hamilton was spreading through our land. The rugged old statesman had the courage to remove the deposits of the bank, thus destroying it.

That act was mobocratic and revolutionary;

but no man dared to impeach him. That was the only possible way by which the bank could be "killed" in practical politics.

The leaders of the Democratic party, blinded by the *ignis fatuus* of their own principles, thought that more completely to popularize our system of government in the states would enable them to break the force of the doctrine of implied powers. Consequently they advocated new constitutions in the different states, under which the judiciary should be elective. The Whigs opposed.

This movement (to speak in general terms) began about the year 1845. No matter what may have been its motive and object, it never did control the Supreme Court, nor should it have done so, though this doctrine of implied powers has been made a part of the federal constitution. What has been the result of the movement?

The Democratic party owes its origin and its continued life to the very nature of our government. The latter is the mother of the former, while the Federal, the Whig, and the Republican parties have all been drawn along different lines, and represent entirely different purposes and interests. The Republican party has ever stood for money and for power and its exercise in

political affairs, under the fostering care of its godfather, the Supreme Court of the United States. And this movement, unintentionally acting against the true interests and the permanent stability of our dual form of government, culminated in an elective judiciary.

And what has the elective judiciary done for the country, its patriotism, its virtue, its honesty, and its purity? Nothing—absolutely nothing! The movement was in some measure due also to the desire of the Democratic leaders of the day to destroy the Whig party, by showing that the Whig party had no confidence in the people. The elective system has degraded and debased the bar, debauched the judiciary, made a law school of the judicial office, corrupted the politics of the country, and made the great mass of the people indifferent to the import of current events. Meanwhile the greed of money, coupled with indifference as to the character of our judges, is fast making moral cowardice a trait of the American people.

A bold, learned, and independent state judiciary, beyond the touch of corporations, beyond the influence of scheming politicians, might have had the brains to note, and the courage to expose, the constant and increasing attacks upon

the federal constitution by the federal supreme court. "What will an elective judiciary do to protect the states in the enjoyment of their reserved rights under our dual system?" "Wait till after the next election." And the next election, and to-morrow, never comes.

May I give a reason for the faith that is in me on this the most important movement ever started in American politics, the most radical, the most far reaching, and the most fraught with evil to the American people, with immediate disaster now at hand—disaster to our system of government? It is absolutely clear to my mind, if history be a reliable guide, that its effect will be soon to turn over to the federal supreme court our entire government. That court, having already introduced into our political system the prerogative of the crown, under the doctrine of implied powers, will soon claim the power and the right to control the official action of the chief executive of our republic, will rob the state courts of all jurisdiction over corporations by a fiction of the law,—a fiction of the law originated by itself for that very purpose, and will soon announce the principle that this government is not a compact between the states, that its sovereignty does not rest in the people of

the different states as political bodies, but in the federal government, whose powers are to be found enumerated and stated in the judicial opinions of the Supreme Court of the United States.

A state judiciary, independent in its origin, unamenable to current politics, unapproachable by corporations through their influence on elections, as firm and as fixed in office as the judges of the federal supreme court, would have protected the states from such opinions. But, overcome by intense desire to retain office, they are unable to emancipate themselves from the dominating power of the wire-puller and the political boss. The result: the office has become political in its tenure, and the state judges themselves are politicians,—a condition so disastrous to the principles of the old Democratic party that we are confronted with this serious question, Has the Democratic party any principle? At the time that we deplore this result we more greatly lament the other, that the state governments are at last entirely at the will of the federal supreme court, by whose decisions every point now mooted in a state court can easily be made a federal question. This means that the ultimate jurisdiction of the case is in the federal courts.

What is to be the end of this destruction of state sovereignty the finite mind of man may not foresee. But if history does repeat itself, the revolution of 1776, in its fundamental principles, will have to be fought again. If the act of Jackson was mobocratic in its nature, as it unquestionably was, it was a mob of one man who had the courage of his conviction. If he broke down the doctrine of implied powers in that instance, he could not get at the federal supreme court in any other way, the court that has maintained the doctrine of implied powers from that day to the present. Who will lead the "mob" when it again undertakes to rid our courts of this violent usurpation of rights that do not belong to the United States through any principle?

But the present condition of affairs in our states courts and in our practical politics may not remain *in statu quo*—they must progress, developing along present lines, unless arrested and thrown back to the Constitution. Can the present condition result in any movement that will not inevitably produce a "mob" or a revolution? Mobs when successful become known in history as revolutions; when unsuccessful, as unlawful assemblies.

When considered from the standpoint of history, why should an American or an Englishman stand aghast, looking with horror at such an assembly of men determined to right their wrongs and defend their rights and protect their liberties? For what is the history of the Anglo-Saxon race, from the dawning of the day when it emerged from the Black Forest of Germany to the present time, but the history of a mob?

Let us take a passing glance at the well-established facts of recorded history. The Barons at Runnymede were a mob; then there was the beginning of government according to law enacted by a legislative assembly. Simon de Montfort led a mob; then there was the beginning of the English House of Commons; Wat Tyler led a mob; then there was the origin of the great common people—a people known only to the English-speaking race. Charles I was beheaded by a mob, and the divine right of kings passed away, never again to be known in human history, and with it prerogative of kings. Oliver Cromwell led a mob; then followed the first assertion of all true governmental principles by the common people—that government rests on the consent of the governed, from which comes that other

great principle, the personality of man, which is abroad in the world to-day. The convention parliament was a mob which drove King James from England; then the English monarchy became a constitutional government, and the powers and rights of the people have been steadily increasing from that day to this. A mob threw tea into Boston harbor; then began the American Revolution. George Washington led a mob; and the American colonies became sovereign states. The Declaration of Independence was promulgated by a mob, and its voice is yet being heard, re-echoing around the globe, giving vitality to the dead rights of the dead. Abraham Lincoln led a mob, and, thanks be to Almighty God, not a human being on the habitable globe that speaks the English language as his native tongue is a slave to-day.

The federal courts have carried their enforcement of Hamilton's principles far enough. The American people have had enough of the brilliant bastard.

CHAPTER VII

The doctrine of state rights is beginning once more to show its face to the American people. One may hear its utterance on many unexpected occasions, from many men who were scarcely expected to touch that question in their public utterances. The doctrine of state sovereignty has not been wholly overthrown; home rule in principle is not yet dead. An elective judiciary may not be trusted. The people must look to themselves for the protection of their rights. God in His providence will yet send this people a leader who will lead them from their house of bondage and wrest our great federal constitution from the treasonable grasp of the federal supreme court of the United States and teach the members of that court the true meaning of their oath of office. Why does the possession of power, growing by what it feeds on, so debase the human character, so obscure the boundaries between right and wrong, and so blunt the human conscience? May man never be trusted? Must he always be watched? "Eternal vigilance is the price of liberty." History does re-

peat itself. If the states have their reserved rights, then the doctrine of implied powers has no place under a written constitution. If the doctrine of implied powers is correct, then the states will, *ex necessitate rei*, be compelled to exercise themselves as subordinate authorities—to quote Hamilton, a sort of local police,—*sine qua non*. Order will yet come out of all this confusion, although we read in our public prints of one distinguished politician publicly advocating government through the courts, and of another advocating governmental control and ownership of railroads, which have already blotted state lines out of existence. These words by Franklin in referring to the federal constitution no longer seem to be the pessimistic utterance of an old man who had struggled in vain for his liberty: “I am apprehensive, therefore,—perhaps too apprehensive,—that the government of these states may in future times end in a monarchy.” Admit the existence of government through the courts, in what would the stability of it consist? In the opinion of the judges then forming the court? In the opinions of subsequent judges overruling the opinions of their predecessors? They would have the right to overrule their predecessors’ opinions. The

government would be overturned. How? By the stroke of a pen or by a few uttered words.

Suppose the federal government takes all the railroads by purchase or assumes control of them under the interstate commerce clause in the Constitution, which it has the right to do if this doctrine of implied powers is correct, what would be the result in this the first quarter of the present century? In the interests of peace and good government the executive would simply announce to this people, as Cromwell announced to his people, that it was best for him to continue in office, then proclaim himself protector of the United States. One banquet, in jest, has already been held to proclaim the coming of our first king. "Coming events cast their shadows before," and "many a true word is spoken in jest."

What can prevent the absolute consolidation of our government if the government should control all our railroads? Centralization of all governmental power at Washington would be an actual necessity to this people, because interstate roads would not alone be involved, but all the roads, even those strictly and geographically confined to a state, would come within the grasp of this all-powerful necessity. What

would that form of government be but a monarchy, with a thin transparent varnish of democracy, so called, or republicanism, in name, but not in reality? This interstate clause is the only clause in the federal constitution from which the doctrine of implied powers could be deduced or applied with any pretense to justification in even illogical argument. And this clause will yet be invoked in aid of this scheme when the people have been more corrupted by money and when they have become more indifferent to the preservation of their political rights and their personal liberties because they have money both in their pockets and in the banks.

John Fiske, in his *Critical Periods of American History*, page 237, utters these prophetic words:

“Our federal government has indeed shown a strong tendency to encroach upon the province of the state governments, especially since our late civil war. Too much centralization is our danger to-day, as the weakness of the federal tie was our danger a century ago. The rule of the Federalist party was needed in 1789, as the rule of the Republican party was needed in 1861, to put a curb upon centrifugal tend-

encies. But after federalism had fairly done its great work, at the beginning of the nineteenth century, it was well that the administration of our national affairs should pass into the hands of the party to which Thomas Jefferson and Samuel Adams belonged and which Madison, in his calm, statesmanlike wisdom, had come to join. And now that in our own day the disruptive powers have been even more thoroughly and effectually overcome, it is time for the principles of that party to be reasserted with fresh emphasis. If the day should ever arrive (which God forbid) when the people of the different parts of our country shall allow their local affairs to be administered by prefects sent from Washington, and when the self-government of the states shall have been so far lost as that of the departments of France, or even so far as that of the counties of England,—on that day the progressive political career of the American people will have come to an end and the hopes that have been built upon it for the future happiness and prosperity of mankind will be wrecked forever.”

Let the doctrine of implied powers, government through the courts, and the ownership of

the railroads by the government,—a revival and a combination of Cicero, Cæsar and Claudius,—unite their influence, money, and power, and that day will be here. And is it not to the monetary interests of these three forces to combine? And when combined, who may resist them? Only a revolution more terrible than the French Revolution. And if the federal supreme court is true to itself, to Alexander Hamilton, and to John Marshall, such a combination would be sustained by that court. Its love of power, coupled with the knowledge that judges cannot be impeached and justly punished for opinions judicially uttered, would nerve them to be true to their past and to their idols. Pertinent to this subject, George Mason (*Madison Papers*, Vol. 2, page 1065) uttered these wise and thoughtful words in the convention: “From the nature of man, we may be sure that those who have power in their hands will not give it up while they can retain it. On the contrary, we know that they will always, when they can, rather increase it.” I believe Charles V is the only monarch known to history that ever resigned a crown.

The English origin of the doctrine of implied powers is an established fact in English history. Its American origin is too well known to

justify a current comment as to the date of its beginning. We know why it was transplanted from England and brought to this country; we know the object of its resurrection from dead history. We know what it has done and what it is now in the free country whose noble men in 1776 fought, bled, and died that it might never again assert itself in our government. I quote from Gordy's *Political Parties*, Vol. II, page 1:

“The ship of state was driving before a terrible storm when James Madison took the helm in 1809.

“The Republicans had used their weapon of peace against France and England and it had broken in their hands. They had gained control of the government because of their championship of the liberty of the individual, because of their opposition to every measure that tended to increase the powers of the general government at the expense of those of the states. To protect the liberty of the individual at all hazards, to vindicate the capacity of the people to govern themselves, was their special mission. Could they accomplish their mission and at the same time act on the theory that the United States was a nation? Were the liberty of the individual

and the centralization of power required by the assertion of nationality compatible? *The Republicans* [now Democrats] had maintained that they were not. Hence their theory of the central government—the foreign branch of our governmental system, the domestic branch being vested in the government of the states.”

Read between the lines, and you will have what this author ought to have written. This horrible and imperial doctrine was then understood, feared, denounced, and fought successfully before the people; but that contest could not enter the federal supreme court and oust from office judges who were striving to build up a government outside the Constitution that would control at their despotic will both the foreign and the domestic branches of our dual system. Their constant assertion of this doctrine is nothing less than an open declaration of war against our dual system of government, against the rights of our citizens under the sovereignty of the states, against the rights of the states as political sovereignties and as original parties to the federal compact as fixed by the federal constitution and as explained by the debates of the federal convention. But a day of reckoning will come. “The mills of the gods

grind slowly, but they grind exceeding small.”

The object of this doctrine as explained by its introduction into our dual system was simply to add to the powers of the federal government—to which no limit could be fixed if submitted to by the states; powers so added in the future would destroy all the rights of the states, unless checked in its growth, fixed in its limitations, and thoroughly understood in its application, both in political and in fiscal affairs. What powers have the states to check its growth or to fix its limitations? None—absolutely none. Its growth, development, limitations, and applications depend exclusively upon the opinions of the federal supreme court, and that court, one of the three departments into which our system of government is divided, is not amenable to either the executive or the legislative department. The will of the federal supreme court is the law. Its opinions are the evidences of the operation of the doctrine of implied powers.

Before quoting from Justice Gray's most remarkable opinion in *Quillard vs. Greenman* (Vol. 110, U. S. R., page 421), in many points possibly the most remarkable ever given to the country by the Supreme Court of the United States (it goes to the very verge of pronouncing the rights of the states and their citizens as

merely the spontaneous and unmerited gifts of the federal government, which that government has the right to withhold at any time, or to prohibit the enjoyment and exercise thereof at its discretion), I quote three articles of the Constitution itself:

“The Constitution and the laws of the United States which shall be made in pursuance thereof—shall be the supreme law of the land.”

“The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.”

“The powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the states respectively or to the people.”

I here offer a few definitions of the word “disparage,” used in the second of the articles just quoted, as given by Webster:

“To dishonor by a comparison with what is inferior, to lower in rank or estimation; to undervalue; to bring reproach on; to vilify; to debase; syn.—to decry; depreciate; undervalue; vilify; reproach; detract from; derogate from; degrade.”

It would indeed be a curiosity in judicial logic

if the federal supreme court would undertake to reconcile some of its opinions with both these articles in the same argument. I have frequently seen distant references to Art. 10 in the courts' opinions, but never once to Art. 9, so far as I now recollect,—and surely I would not have forgotten if the opinion had made the most distant allusion to the use and force of that word—*Disparage*.

Vol. 110, U. S. R., page 438: “No question of the scope and extent of the implied powers of Congress under the Constitution can be satisfactorily discussed without repeating much of the reasoning of Chief Justice Marshall in the great judgment in *McCullough vs. Maryland* (4 Wheat. 316), by which the power of Congress to incorporate a bank was demonstrated and affirmed, notwithstanding the Constitution does not enumerate, among the powers granted, that of establishing a bank or creating a corporation.”

Chief Justice Marshall did not demonstrate—nor could he demonstrate—that Congress under the Constitution had the power to create a bank or any other corporation, for that power was positively refused to Congress by a very large

majority, and Chief Justice Marshall never was other than the exponent or expositor on the bench of Alexander Hamilton's English, unconstitutional and radical political opinions. This statement by Justice Gray is a perfect illustration of the intellectual cowardice and moral slavery of the court to Hamilton's and to Marshall's political opinions. How could John Marshall demonstrate that to be a fact which was not true—affirm the existence of a right which had been refused and the exercise of a power positively and indisputedly withheld? Will that court never do its own thinking? Some text writers have gone to far as to excuse some of the erroneous opinions on the theory that the *Madison Papers* had not then been published, consequently that Gray was unacquainted with the important facts contained in them that bore directly on his opinions. But possibly Justice Gray had read them. If he had, they made no impression on his mind.

Justice Gray makes this quotation from the Chief Justice's opinion in the McCullough-Maryland case: "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, *which are not pro-*

hibited,* but consist with the letter and spirit of the Constitution, are constitutional.”

Analyze the loose language of that sentence. Who is to be the judge of the scope of the Constitution and define that compact? The facts which underlie its formation or the opinion of a court that disregards those facts—in fact, logically denies their existence. “Let the end be legitimate.” Legitimate for what? For a purpose not granted, but prohibited, to Congress. Again, the opinion is the sole source from which to ascertain if that end be legitimate. “* * * and all means which are appropriate, which are plainly adapted to that end, which are not prohibited * * *” Alexander Hamilton knew that the right and the power to create a bank had been most positively prohibited to congress by a large majority of the states. If appropriate, and plainly adapted to that end, how may congress usurp the power to create a bank, and John Marshall decide it to be constitutional, when it had been prohibited? This instance is not the only one in Marshall’s political opinions in which, blindly following Hamilton, his argument logically refutes itself.

After referring to Elliott’s *Debates* and the *Madison Papers*, Judge Gray concludes the

*Italics are mine.—F. T. F.

paragraph of his argument to which I have referred with this remarkable statement:

“As an illustration of the danger of giving too much weight, upon such a question, to the debates and votes in the Convention, it may also be observed that propositions to authorize Congress to grant charters of incorporation for national objects were strongly opposed, especially as regarded banks, and defeated. The power of Congress to emit bills of credit as well as to incorporate national banks is now clearly established by decisions to which we shall presently refer.”

If the proposition to incorporate a bank was defeated, where did the power come from? It was enacted, enumerated, and granted by Alexander Hamilton; it was adopted and approved by John Marshall, and the decisions to which Justice Gray shall refer were each and all delivered after “Old Hickory” was dead and buried.

What is the danger in referring to the debates and votes in the federal convention that formed the Constitution? Can a constitutional question that relates to the powers of govern-

ment under a written constitution be correctly decided unless the consideration of that question is based on the facts of the history from which it springs and from which it gets its life,—its privilege and its authority to do this act or that, or to pass this law or that? The facts of history as recorded in the *Madison Papers* are the womb from which the constitution was born. They, and only they, are its unerring interpreters. And why have they not been consulted and followed as a guide by the federal supreme court? Because they would have checked the increase of the court's judicial power and supremacy and have stopped the usurpations of jurisdiction of matter and things which of right belonged to the states. Why did Congress not create a bank—a national bank—after “Old Hickory” removed the deposits, until after the war between the states, if a bank was legitimate, appropriate, within the scope of the Constitution, and plainly adapted to some good end? Johnston, in *American Politics*, page 124, gives the reason for the removal of the deposits, among them, “that the bank's funds had been largely used for political purposes,” “that its four government directors had been systematically kept from knowledge of its management,”

and, on page 126, "that the majority report complained that the powers of the committee had been so restricted by the bank that a full investigation had been impossible."

One more citation from Justice Gray, p. 450:

"To quote once more from the judgment in *McCullough vs. Maryland*, 'Where the law is not prohibited and is really calculated to effect any of the objects entrusted to the government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department and to tread on legislative ground.' "

Here is a complete and indisputable refutation of Chief Justice Marshall's entire argument, for, as the power to charter a bank was positively prohibited to Congress, its necessity could not be inquired into. What more can a strict constructionist demand than this statement? John Marshall assumed himself to be a congress by his judgment. This celebrated decision was rendered in the year 1819. Jackson removed the deposits in the year 1833, and by that act repealed John Marshall's judicial legis-

lative enactment. John Marshall died in the year 1835. Andrew Jackson by his heroic act usurped less power and authority than did John Marshall by his legislative enactment. The former ended where it began; the baleful influence of the latter still survives.

Why did the government not need a bank in those many and turbulent years after the old bank was blotted out of existence? Did not politicians need money? Did not the government need a corruption fund to give power and influence to the wealthy classes and to buy offices for the Federalists throughout the land? What was the doctrine of implied powers (a political bastard like its father; but, unlike its father, it knew its father) doing during all these years? Was it strengthening its vital forces by that long rest?

It is refreshing to turn from such judicial stuff as the argument of Justice Gray, which the court allowed to go forth to the bar as its opinion, to the bold, manly, powerful, and patriotic dissenting opinion of Justice Field, of which the opening sentence is as follows: "From the judgment of the court in this case, and from all the positions advanced in its support, I dissent." Another quotation: "There will be

many who will adhere to the teachings and abide by the faith of their fathers." Possibly this man had old-fashioned Calvinistic blood in his veins.

These questions are sufficient to this argument. They expose the ambition and the object of Hamilton's bank project and Marshall's exposition of this his imported doctrine.

"But [Field, U. S. R., p. 466] beyond and above all the objections which I have stated to the decision recognizing a power in Congress to impart the legal tender quality to the notes of the government, is my objection to the rule of construction adopted by the court to reach its conclusions, a rule which fully carried out would change the whole nature of our Constitution and break down the barriers which separate a government of limited from one of unlimited powers.

"When the Constitution came before the conventions of the several States for adoption, apprehension existed that other powers than those designated might be claimed, and it led to the first ten amendments. When these were presented to the States they were preceded by a preamble, stating that the conventions of a number of the States had at the time of adopting the

Constitution expressed a desire, 'in order to prevent misconception or abuse of its powers that further declatory and restrictive clauses should be added.' One of them is found in the Tenth Amendment, which declares that 'the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.' The framers of the Constitution, as I have said, were profoundly impressed with the evils which had resulted from the vicious legislation of the States making notes legal tender, and they determined that such a power should not exist any longer. They therefore prohibited the States from exercising it, and they refused to grant it to the new government that they had created. Of what purpose is it then to refer to the exercise of the power by the absolute or by the limited governments of Europe or by the States previous to our Constitution? *Congress can exercise no power by virtue of any supposed inherent sovereignty in the general government.** Indeed, it may be doubted whether the power can be correctly said to appertain to sovereignty in any proper sense as an attribute of an independent political community. The power to commit violence, perpetuate injustice,

*Italics are mine.—F. T. F.

take private property by force without compensation to the owner, and compel the receipt of promises to pay in place of money, may be exercised, as it often has been, by irresponsible authority; but it can not be considered as belonging to a government founded upon law. *But be that as it may, there is no such thing as a power of inherent sovereignty in the government of the United States. It is a government of delegated powers, supreme within its prescribed sphere, but powerless outside of it. In this country sovereignty resides in the people, and Congress can exercise no power which they have not, by their Constitution, entrusted to it; all else is withheld.**

“It seems, however, to be supposed that, as the power was taken from the States, it could not have been intended that it should disappear entirely, and therefore it must in some way adhere to the general government, notwithstanding the Tenth Amendment and the nature of the Constitution.

“The doctrine, that a power not expressly forbidden may be exercised, would, as I have observed, change the character of our government. If I have read the Constitution aright, if there is any weight to be given to the uniform

*Italics are mine.—F. T. F.

*teachings of our great jurists and of commentaries previous to the late civil war, the true doctrine is the very opposite of this.** If the power is not in terms granted, and is not necessary and proper for the exercise of a power which is thus granted, it does not exist. And in determining what measures may be adopted in executing the powers granted, Chief Justice Marshall declares that they must be appropriate, plainly adapted to the end, not prohibited, *and consistent with the letter and spirit of the Constitution.†* Now, all through that instrument we find limitations upon the power, both of the general government and the State governments, so as to prevent oppression and injustice.”

Comment on this master-argument is unnecessary. Discussion will not strengthen its force; beyond all doubt the argument is the ablest in behalf of strict construction ever made in this country by judge, lawyer, or statesman. It does not refute itself, as do so many of John Marshall's opinions, when critically analyzed.

Take the conclusion reached by Justice Gray and accepted by the court as law, constitutional

*Italics are mine.—F. T. F.

†Italics are Justice

Fields'.

law in this country, which pretends to have a written constitution, and what is it? Only this: any power or authority or right exercised, or claimed to be exercised, by right in any foreign land, under its form of government, unless each and all were expressly denied *hac verba* to our government, federal and state, by our Constitution, can be constitutionally exercised by our government, and a law passed by congress for that purpose is constitutional by virtue of the doctrine of implied powers. Neither Charles I nor James ever stretched their prerogatives as king of England further than did Justice Gray this English doctrine of "implied powers," so called in mock deference to our written Constitution, and into which he injected by his argument and illustrations the customs and powers of foreign countries and their governments. As I have said, the doctrine of state rights is once more beginning to attract the attention of our public men. Soon it will begin to disturb our political affairs. Although the stiletto of the judicial assassin has been thrust into its back again and again, still it lives after its long rest. Its next conflict will be with the doctrine of implied powers.

Upon the side of that doctrine will be arrayed

the power of the Supreme Court of the United States, with the usurpation and assertion of powers prohibited by the federal convention which formed our written constitution. Upon the side of state rights will be arrayed, in all their greatness, those two grand fundamental principles that are imbedded in the government in the affairs of man, of God himself, whether they relate to law, politics, or to religion,—that all government rests on the consent of the governed and on the personality of man. I repeat, John Calvin—and John Calvin alone—discovered the personality of man; he found man a slave, and he made him a freeman; he found man a subject, and he made him a citizen. And from this noble, fundamental, irresistible principle is, by an unerring logic, deduced that man has the right to govern himself and to establish his own government, that when established it has no power, right, nor authority not granted by him. The doctrine of state rights is part and parcel of our constitution, which is not only a compact, but a contract between the states composing this federal republic, and without which this republic would not be a federal government, but a monarchy, with an elective sovereign as its executive head. The doctrine of implied powers is outside

the written constitution, and that compact has no provision that calls for its operative exercise. It justly belongs to a monarchy, of which the executive head is a king by inheritance. In the approaching conflict between these doctrines the leader of the constitutional government forces will not be a political quack, nor a political advertiser, nor a political speculator or broker.

Hamilton's fame as a statesman rests on his resurrection of the prerogative of the English king under the form and name of the doctrine of implied powers. In those brilliant essays in *The Federalist* in which he himself combined the characters of the diplomatic wire-puller and the accomplished demagogue, concealing each from the public eye by the charm and fascination of English and compact logic, I find that he himself, unmindful, or rather not knowing, that he would yet call this doctrine into existence, has in these very essays given to the thoughtful student of constitutional law the ablest refutation of this doctrine. I quote from No. LXXVIII.

“The complete independence of the courts of justice is peculiarly essential in a limited Constitution.” By a limited Constitution, I understand one which contains certain specific excep-

tions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this all the reservations of particular rights or privileges would amount to nothing * * * It is far more rational to suppose that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A Constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or in other words, the Constitution ought to be preferred to the statute; the intention of the people to the intention of their agents.

“Nor does this conclusion by any means suppose a superiority of the judicial to legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people declared in the Constitution, the judges ought to be governed by the latter, rather than the former.”

The right or power to incorporate was one of those “certain specified exceptions” to the legislative authority and “*the like*” mentioned by the distinguished Federalist. No matter what the occasion or its demands, Alexander Hamilton always obeyed the injunction of the Apostle Paul—“to be all things to all men, hoping thereby to gain some,” and always wrenching it by his conduct in its application from its true interpretation. I will close my argument with a short quotation from Bancroft’s *History of the Constitution*, Vol. 2, page 9:

“That all power not granted to the general government remained with the states was the opinion of every member of the Convention—but they held it a work of supererogation to place in the Constitution an express recognition of the reservation.”

What a painful proof of the finite mind of man!

I have now passed in what I believe to be a just review of Alexander Hamilton; his private life; his character; his theories of government as they are to be found in the *Madison Papers*, the notes of which were examined by him and admitted by him to be correct; his argument in behalf of our written constitution in *The Federalist*, by which he contended and proved that our government was a federal, not a national, government, and how in a moment—in the twinkling of an eye—he kicked his theories out of his pathway as loathsome weeds as soon as he became Secretary of the Treasury; his conduct and measures proposed by him as Secretary of the Treasury, their purpose, their aim and their object, their influence and their effect through our federal courts upon our government and its political affairs.

And what is the logical conclusion? I answer my own question, thus: In intellect Alexander Hamilton was a giant; in character Alexander Hamilton was a moral weakling.



JUL 31 1911

One copy del. to Cat. Div.

JUL 31 1911

LIBRARY OF CONGRESS



0 011 711 721 2